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Supreme Court U.S.
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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

SUZANNE E. HARPER, JAMES S. HARPER,
JOHN A. WARD, JR., LISA G. WARD
and DUDLEY E. WILLIAMS, JR.,

Petitioners,

vs.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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189 pp

QUESTION PRESENTED

In *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 612 (1997), this Court noted, but declined to reach, the question whether a class representative in a federal class action could release or settle claims of absent class members that were, as a matter of constitutional law, not yet ripe for adjudication on the merits. That question is among the questions before this Court in *Ortiz v. Fibreboard Corp.*, No. 97-1704, although it may not be necessary to reach it there. This petition squarely presents it:

In holding that a federal district court could approve and enforce a class action settlement in which class representatives had released damage claims of absent class members that, as a matter of constitutional law, were not ripe for adjudication on the merits, did the courts below ignore this Court's precedents and violate the case or controversy requirements of article III or the due process clause of the fifth amendment?

STATEMENT UNDER RULE 14.1(b)

The following persons and entities are parties to the proceeding in the court of appeals.

1. Stacey A. Williams
2. Salvatore Carone
3. James Georgias
4. Staci Beasley
5. Peter R. Richard
6. Gary L. Blank
7. Gwynne R. Dooner
8. Dudley E. Williams, Jr.
9. Suzanne E. Harper
10. James S. Harper
11. John A. Ward, Jr.
12. Lisa G. Ward
13. General Electric Capital Auto Lease, Inc.
14. Sun Hyundai, Inc., f/k/a Kailer Younquist Oldsmobile, Inc.
15. Jacobs Twin Honda, Inc.

Petitioners are natural persons.

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PETITION FOR A WRIT OF CERTIORARI

Suzanne E. Harper, James S. Harper, Dudley E. Williams, John A. Ward, Jr., and Lisa G. Ward respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App A. 1a-18a) is reported at 159 F.3d 266 (7th Cir. 1998). The 1995 opinion of the district court approving the settlement at issue (App. E, 32a-55a) is reported at 1995 WL 765266.

JURISDICTION

The Court of Appeals entered its judgment on October 2, 1998, and it denied rehearing on November 27, 1998, *see* App. G. 60a-61a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, section 2 of the constitution provides:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . .

The fifth amendment to the constitution provides in pertinent part:

> No person shall be . . . deprived of life, liberty, or property without due process of law.

15 U.S.C. § 1667b(b) provides:

> (b) Penalties and charges for delinquency, default, or early termination. Penalties or other charges for delinquency, default or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility or otherwise obtaining an adequate remedy.

STATEMENT OF THE CASE

The facts relevant to this petition are quite straightforward. In December 1994, a group of plaintiffs commenced a class action in the Northern District of Illinois (the "*Williams* Action"). The complaint (App. H 62a-79a) challenged respondent's practices with respect to disclosure of penalties or other charges for early termination of respondent's automobile leases.[1] District court jurisdiction was grounded on 28 U.S.C. § 1331, because that the action arose under a federal statute, the Consumer Leasing Act ("CLA"), 15 U.S.C. § 1667

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[1] Early termination of an auto lease occurs when the lease is terminated prior to its contractually-agreed end point. This may occur in any number of situations, including where the lessee simply decides he or she no longer wishes to lease the car and terminates the lease or when the leasing company terminates the lease for non-payment.

et seq., and its implementing regulations. Jurisdiction over supplemental state law claims existed by virtue of 28 U.S.C. §1367.

All of the Williams plaintiffs had terminated their leases when they commenced their action. Their original complaint alleged that respondent's termination practices violated the CLA because respondent inadequately disclosed the early termination or default charges under its leases, *see* 15 U.S.C. § 1667a. (App. H 62a-79a) On July 24, 1995, the plaintiffs filed an amended complaint (App. I 80a-118a). In addition to the disclosure violation alleged in the original complaint, plaintiffs now also alleged that respondent's early termination charges violated the CLA because they were in fact unreasonable, *see* § 1667b(b).

Three days *before* the plaintiffs filed their amended complaint, the parties entered into a Settlement Agreement, which provided for class certification for settlement purposes. (App. J at 126a) The settlement agreement defined the proposed class to include:

> [A]ll persons in the United States, other than residents of Connecticut, who between January 1, 1987 and July 21, 1995 entered into an automobile lease assigned to General Electric Capital Auto Lease, Inc. ("GECAL") and

> written on a lease form prepared by GECAL [identified by number]

Id. The Settlement Agreement included "a complete and final settlement" of "all claims asserted . . . *and all [class] claims that might have been asserted*" in the *Williams* action. *Id.* at 124a-125a (emphasis added). Respondent was not required to make any alteration in its early termination practices.[2]

On July 26, 1995, the district court provisionally certified the class, ordered notice to the members of the proposed class, scheduled a fairness hearing, and set a deadline of November 1, 1995 for class members to opt out of the class. (App. D 29a-31a) The court held the fairness hearing on November 29, 1995.[3] At the hearing, the court extended the deadline for opting out of the class, but it does not appear that additional notice was sent informing class members of the

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[2] Class members, as consideration for releasing their claims, were offered a choice of receiving: a) a $50 certificate to be applied against early termination charges, or b) a $100 certificate to be applied toward a new lease. (App. J at 122a) The total value of the amount of all early termination certificates was capped at $2.5 million. (App. J at 122a-123a) One objector described these options as a "joke" since his termination charge was over $1,000. (*See* App. E at 43a .)

[3] The court did not make any separate inquiry inquire into adequacy of representation, which, as *Amchem Products v. Windsor*, 526 U.S. 591, 620-622 (1997) makes clear, is plain error.

change in the deadline. (*See* App. E 32a-55a) After a status conference, for which, again, it does not appear that any class notice was sent and at which the court raised concerns regarding the scope of the release, the court approved the settlement, in a memorandum opinion dated December 19, 1995, that focused almost exclusively on the monetary value of the inadequate disclosure claims. *Id.* In that memorandum, the court scheduled a further status conference for January 4, 1996, to sign the Final Judgment and Order. The court's January 4 judgment enjoined "all class members who did not opt out of the class . . . from commencing, prosecuting, or asserting by way of counterclaim or defense against GECAL any of the claims dismissed, settled or barred pursuant to this order." (App. F at 58a-59a)[4]

On July 3, 1996, petitioners were among a group of plaintiffs who commenced a class action in the Middle District of Florida ("the *Dooner* action"), alleging, *inter alia*, a violation of § 1667b(b) (App. K 135a-157a). Petitioners had entered into their leases during the period January 1, 1987 through July

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[4] The court ordered that a copy of its December 19 decision be sent to all objectors, so that they could choose whether to opt out. (App. E at 54a) The record does not indicate that such notice was sent to any other members of the class.

21, 1995, and thus were members of the *Williams* class as it was defined. But their substantive claims under the reasonableness provision § 1667b(b) (and state law) arose only when they terminated their leases and were assessed early termination charges. *The Harper petitioners and the Ward petitioners terminated their leases after the district court entered its final order dismissing the Williams action pursuant to the settlement.*[5] (App. K at 146a-147a, ¶¶ 31-32). Subsequently, the Ward petitioners were assessed early termination charges of $9,728.20; the Harpers were assessed early termination charges of $1,282.10, while Dudley Williams was assessed $1,237.15. (*Id.* at ¶¶ 30-32)

On September 16, 1996, respondent moved to enforce the *Williams* judgment and for an injunction against petitioners and the other *Dooner* plaintiffs to bar their action. Petitioners

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[5] The Harpers terminated their lease on January 20, 1996, 16 days after entry of the final order, although 11 days prior to the unannounced extended opt-out deadline. (App. K at 146a, ¶ 31) The Wards terminated their lease on March 12, 1996, long after even the extended opt-out deadline had passed. (*Id.* at 147a, ¶ 32). Petitioner Dudley Williams (no relation to Stacey Williams, the named plaintiff in the *Williams* action) terminated his lease on December 19, 1995, (*Id.* at 146a, ¶ 30), the very day that the district court issued its memorandum decision approving the settlement, and a date that was nearly three weeks after the court held its fairness hearing and more than a month after the only opt-out deadline of which the class was given notice.

opposed the motion. By order filed January 21, 1997, the district court granted the injunction (App. C, 27a-28a; *see also* App. B, 19a-26a). Petitioners timely appealed to the Seventh Circuit.

In *Highsmith v. Chrysler Corp.*, 18 F.3d 434 (7th Cir. 1994), the Seventh Circuit had held that district courts could not adjudicate the merits of early termination challenges brought under § 1667b(b) by lessees who had not yet terminated their leases.[6]

In this case, the same court, citing *Highsmith*, said:

> We agree with the Dooner plaintiffs that there are legitimate questions about the ripeness of the second type of claim [i.e., § 1667b(b) and substantive state law claims] in their cases. None of the Dooner plaintiffs had tried to terminate a lease, and so it might have been unclear how the appraisal procedures would have worked for them, or whether the amount of the early termination charge would have been reasonable. These claims never actually arose and thus, as of the time of the Williams

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[6] The court reasoned: "[O]ne cannot prove facts about the specific details and consequences of an event that has not yet occurred." *Highsmith*, 18 F.3d at 438. Several district courts have reached the same conclusion. *E.g., Demitropoulos v. Bank One Milwaukee, N.A.*, 915 F.Supp. 1339, 1408 (N.D. Ill. 1996); *Simon v. World Omni Leasing, Inc.*, No. 91-0896-AH-M (S.D.AL 1992).

> settlement, were only hypothetically available. [Citation omitted]

Citing, *inter alia*, both *Amchem Products* and the circuit court opinions in *Fibreboard*, the court went on to say:

> If that were all we had, then the twin problems of standing and justiciability of future claims with which other courts have grappled might be squarely presented . . . .

159 F.3d at 273 (citations omitted).

Nonetheless, the court affirmed the district court. The heart of its analysis is in the next few sentences:

> *Our case differs from the problems those courts discussed, however, because it is clear that the Dooner plaintiffs had at least one presently justiciable claim at the time of the Williams settlement: their claim that the disclosure provisions in the leases violated* the CLA. That claim, as even counsel for the Dooner plaintiffs admits, was properly before the Northern District of Illinois in Williams and was subject to resolution in the settlement. We can therefore narrow the issue before us to whether any injunction against the Dooner plaintiffs' Florida litigation could reach only their disclosure claims, or whether the Illinois court could properly enjoin the entire Florida suit.

159 F.3d at 273 (emphasis added).

The court endorsed the latter proposition. Simply put, the court held that the possession of *one* claim that is justiciable under article III provides standing to a *class representative* to release (but not to adjudicate) other claims concededly not ripe for adjudication on the merits. For this proposition the court cited no direct authority whatsoever. Rather, the court referred to cases in which an *individual* could release possible future claims, and cases like *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367 (1996), where a class representative was permitted to settle *existing* claims even though the settling *state court* lacked statutory subject matter jurisdiction to adjudicate the released claim.

REASONS FOR GRANTING THE WRIT

THIS COURT'S GUIDANCE IS NECESSARY REGARDING THE ARTICLE III AND DUE PROCESS LIMITATIONS ON CLASS ACTION SETTLEMENTS OF UNRIPE FUTURE CLAIMS

In *Amchem Products,* this Court described the "adventuresome" uses to which the class mechanism has been put in recent times, *Amchem Products v. Windsor,* 521 U.S. 581, 617 (1997),[7] especially in the context of classes certified

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[7] The Court "considerably understate[d] matters" in this regard. Henry Monaghan, "Antisuit Injunctions and Preclusion Against Absent Non

under Rule 23(b)(3), for money damages. 521 U.S. at 614-619. Unsurprisingly, therefore, this Court's guidance has been needed in such contexts. *E.g., Amchem Products*, 521 U.S. at 622-28; *Fibreboard Corp.*, No. 97-1704; *Richards v. Jefferson County*, 517 U.S. 793 (1996). This petition presents an issue on which the need for this Court's guidance is imperative. In *Amchem Products,* the Court noted, but declined to reach, the question whether a federal class action representative could release or settle claims of absent class members that, as a matter of federal constitutional law, were not yet ripe for adjudication on the merits. 521 U.S. at 612. That question is now among those before this Court in *Fibreboard Corp.*, No. 97-1704. This petition squarely presents that question, and with it, issues of article III and due process limitations on federal court class actions.

Resident Class Members," 98 *Columbia L. Rev.* 1148, 1164 (1998).

I.

THE COURT BELOW IMPROPERLY RELEASED FUTURE CLAIMS OF ABSENT CLASS MEMBERS OVER WHICH IT HAD NO ARTICLE III JURISDICTION

As this Court has long recognized: "To establish an Article III case or controversy the litigant first must clearly demonstrate that he has suffered 'injury in fact.' The injury . . . must be concrete in both a qualitative and a temporal sense . . .[The] alleged harm must be actual or imminent . . " *Whitman v. Arkansas*, 495 U.S. 149, 155 (1990). Countless decisions recognize these principles. *See, e.g., Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992) (record does "not support a finding of the 'actual or imminent' injury that our cases require"). These requirements are fully applicable in the class action context. *See Lewis v. Casey*, 518 U.S. 343, 349 (1996) ("It is the role of the courts to provide relief to claimants, in individual or class cases, who have suffered, or will imminently suffer, actual harm . . . .")

No one disputes that article III barred litigation of petitioners' substantive claims when the district court approved the settlement. Until application of the termination clause to them, petitioners "suffered no harm from it." *Highsmith*, 18

F.3d at 434.[8] In these circumstances no principle of law could authorize a purported class representative to release presently non-justiciable claims of the class members. *See Amchem Products*, 521 U.S. at 613 n.15.

Article III's "case or controversy" requirement, the indispensable prerequisite for the exercise of federal judicial power, was not met with respect to petitioners' substantive claims (as opposed to their disclosure claims), because the substantive claims were not in existence when the district court approved the settlement. This is not a technicality to be brushed aside. As this Court has explained:

> [I]n ignoring the concrete injury requirement described in our cases, [federal courts] would be discarding a principle fundamental to the separate and distinct role of the Third Branch. . . . "The province of the court," as Chief Justice Marshall said in *Marbury v. Madison*, 5 U.S. (1

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[8] One district court put the point with particular clarity:

> Where a lessee has not terminated a lease early, there is no way to determine if the early termination charge is reasonable in light of the actual harm to the lessor at the time of the termination. Thus there is no conceivable means by which he could prove that the early termination charge is unreasonable in light of the actual harm to [the lessor]; one cannot prove facts about the specific details and consequences of an event that has not yet occurred.

Demitropoulos, 915 F.Supp at 1408 (citations omitted).

> Cranch) 137, 170. 2 L.Ed. 60 (1803) "is solely to decide on the rights of individuals."

Defenders of Wildlife, 504 U.S. at 576. It is for this reason that this Court has emphasized the "separation-of-powers significance" of the concrete injury requirement, *id.* at 577. Where no injury has occurred, the court lacks power to resolve a claim; disregard of this requirement is an encroachment beyond the authority of the judicial branch.

The requirement of actual injury is to be particularly insisted upon in the class action context. The threat presented to the requirement of adequate representation – a requirement of both article III and the due process clause, if class actions are to be legitimate – is unacceptably high. Classes certified, as here, for settlement purposes only invariably raise sharp problems of adequate representation. As this court has recognized, "[c]lass counsel confined to settlement negotiation could not use the threat of litigation to press for a better offer." *Amchem Products*, 521 U.S. at 621. When, however, the class representative purports to release substantive claims that are not even in existence, the purported class representative has no leverage with respect to these claims – none at all. *See id.* Nor, more importantly, does the class representative have any

incentive to protect the future claims. Quite the contrary: the danger of intra-class conflict emphasized in *Amchem Products*, 521 U.S. at 626 -- the danger, that is, that the interests of "future" claimants will be sacrificed for present benefits (including counsel fees) -- is at its apex in this circumstance.[9]

II.

THE COURT BELOW INCORRECTLY HELD THAT STANDING TO ADJUDICATE ONE CLAIM CONFERRED STANDING TO ADJUDICATE ALL CLAIMS, EVEN THOSE AS TO WHICH THERE WAS NO CASE OR CONTROVERSY

The court below made no mention -- not even a single sentence -- of the foregoing dangers. The lynchpin of the holding turns on a single premise. Even though recognizing that petitioners' substantive claims under § 1667b(b) were non-justiciable when the class representatives purported to settle them, the court held this was no bar to preclusion on the basis of the settlement "*because it is clear that the [petitioners] had at least one justiciable civil claim at the time of the Williams*

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[9] Much concern has been expressed about the dangers of abuse of settlement classes. *See, e.g., Amchem Products*, 521 U.S. at 620-621; *Matsushita Elec. Indus. Co. Ltd. v. Epstein*, 516 U.S. 367, 397-398 (1996) (Ginsburg, J., concurring in part and dissenting in part.)

settlement: their claim that the disclosure provisions of the lease violated the CLA." Apparently, standing exists for all purposes so long as the representative has standing for one purpose. This Court has rejected that contention both in the class context and otherwise.

In *Lewis v. Casey*, 518 U.S. 343, 355 (1995), this Court held that simply because the class representatives had standing to assert one claim did not authorize them "to transform themselves into litigants capable of filing everything from shareholder derivative actions to slip-and-fall claims." Rather, this Court held, the class representatives (prison inmates) could litigate only the matter as to which they had suffered legal injury in fact, 518 U.S. at 355-58.[10]

In *The City of Los Angeles v. Lyons*, 461 U.S. 95 (1983) this Court applied this principle in another context. There, respondent had been a victim of an allegedly unconstitutional

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[10] This Court explained: "[S]tanding is not dispensed in gross. If the right to complain of *one* administrative deficiency automatically conferred the right to complaint of *all* administrative deficiencies, any citizen aggrieved in one respect could bring the whole structure of state administration before the courts for review. That of course is not the law. As we have said, 'nor does a plaintiff who has been subject to injurious conduct of one kind possess by virtue of that injury the necessary stake in litigating conduct of another kind, although similar, to which he has not been subject,'" *Lewis*, 518 U.S. at 358, n.6 (emphasis in original; citations omitted).

police practice. While no one doubted his right to sue for damages, this Court, invoking article III, rejected his effort to enjoin the practice, concluding that there was no basis for believing that respondent himself again faced actual or imminent danger from the practice. *Id* at 105.[11]

These decisions establishes conclusively that the fact that one claim might be adjudicated does not authorize a court to adjudicate other nonjusticiable claims. So here also; the fact that the disclosure claims were ripe for adjudication does not make a case or controversy with respect to petitioners' unripe substantive claims. They remain non-justiciable. This is a principle to be particularly insisted upon in the class action context, if abuses of that mechanism through inadequate representation are to be avoided. *Amchem Products,* 521 U.S. at 621-22, 625-28.

There is another flaw in the court's reasoning. As a matter of both article III and due process, the class representative must be a member of the class he purports to represent. *Amchem Products,* 521 U.S. at 625-26; *see also Lewis v. Casey*, 518 U.S. at 357. With respect to the

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[11] Hart & Wechsler's *The Federal Courts in the Federal System*, 267 n. 4 (4th edition, R. Fallon, et al. eds.)

substantive § 1667b(b) claims, the *Williams* plaintiffs were not members of the same class as the petitioners. The *Williams* plaintiffs belonged to a class of lessees who had terminated their leases, not to one consisting of those who had not. The difference is vital because those who had terminated their leases had no incentive to protect the substantive interests of those who had not. And the *Williams* plaintiffs did not protect those interests. Indeed, the settling plaintiffs in *Williams* gave so little thought to the substantive claims of the future claimants that they did not require respondent, as part of the settlement, to desist from its illegal practices.

III.

NO AUTHORITY SUPPORTS THE COURT'S RULING THAT CLASS REPRESENTATIVES MAY RELEASE UNRIPE FUTURE CLAIMS OF ABSENT CLASS MEMBERS OR THAT A FEDERAL COURT HAS JURISDICTION TO SETTLE UNRIPE CLAIMS IT COULD NOT ADJUDICATE

The court below advanced two other reasons to support its conclusion, each of which is plainly insufficient.

A. The court said that individuals could release future claims. But petitioners did not release their individual substantive claims. Their claims were released by third parties

-- that is, by purported "class representatives" who were *not part* of petitioners' class.

Moreover, petitioners were not given the constitutionally-required opportunity to opt their future damage claims out of the settlement. *See Matsushita*, 516 U.S. at 395 (Ginsburg, J., concurring) (due process requirements include adequate representation, adequate notice of settlement and the right to opt out). The notice of a right to opt out was meaningless to persons like petitioners who had not yet terminated their leases.

Although the *Williams* Settlement purported to provide class members with the opportunity to opt out, the opportunity was illusory as to holders of then-unterminated leases. Class members had to decide whether to opt out by November 1, 1995. Petitioners' leases terminated after that date -- and indeed after the district court had already approved the settlement. Thus, at the time they had to decide whether to remain in the class and waive claims against GECAL for early termination charges, they did not know that their leases would terminate early and that they would be assessed such charges. Petitioners were required to waive a claim they did not yet have and did not know they ever would have. It is unrealistic to expect that persons who have not terminated their leases would have

realized *at the time* of the *Williams* Settlement that they might some day terminate their leases and be assessed thousands of dollars in excessive and unreasonable early termination charges. *See Amchem Products*, 521 U.S. at 628 ("Many persons in the exposure only category . . . may not even know of their exposure, or realize the extent of the harm they incur.")[12]

B. The court below also relied upon *Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367 (1996), and several similarly-postured circuit court opinions for the proposition that a class representative could release claims even though jurisdiction to adjudicate was lacking. Neither *Matsushita* nor any of the cases cited are relevant. All the decisions involved the release of *existing* claims by a court that lacked subject matter jurisdiction to adjudicate them, not the release of *future* claims. *See In re Asbestos Litigation*, 90 F.3d 963, 1018 (5th

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[12] Other court have made the same point. For example, when *Amchem Products* was in the court of appeals, the Third Circuit held:

> It is unrealistic to expect every individual with incidental exposure to asbestos to realize that he or she could someday contract a deadly disease and make a reasoned decision about whether to stay in this class action.

Georgine v. Amchem Products, Inc., 83 F.3d 610, 633 (1996). The Second Circuit has similarly noted: "[P]roviding individual notice and opt-out rights to persons who are unaware of an injury would probably do little good." *In re Agent Orange Prod. Liab. Litig.*, 996 F.2d 1425, 1435 (2d Cir. 1993).

Cir. 1996) (Smith, J. dissenting on this very point), *cert. granted sub nom. Ortiz v. Fibreboard Corp.*, 118 S.Ct. 2339 (1998). What is more, *Matsushita* was not concerned with the authority of a federal court restricted by the case or controversy requirement of article III, but with a different issue: the extent to which a federal court must accord full faith and credit to a state court judgment releasing existing federal claims that the *state* court lacked statutory subject matter to adjudicate. Decisions of this character provide no guidance for any proposition relevant here.

CONCLUSION

The petition for writ of certiorari should be granted.

Dated: February 24, 1999

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APPENDIX

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DATED AND DECIDED OCTOBER 2, 1998

Stacey A. WILLIAMS, et al., on behalf of themselves and all others similarly situated, Plaintiffs-Appellants,

v.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC., et al., Defendants-Appellees.

No. 97-1321.

United States Court of Appeals,
Seventh Circuit.

Argued Nov. 5, 1997.

Decided Oct. 2, 1998.

* * *

Before BAUER, RIPPLE, and DIANE P. WOOD, Circuit Judges.

DIANE P. WOOD, Circuit Judge.

Because class actions are brought in the names of only a few representative plaintiffs on behalf of a larger defined group, it happens from time to time that duplicate or overlapping class actions are filed. When this occurs, it normally is necessary to decide which lawsuit (if any) definitively resolves a matter between particular parties. That is the principal issue before us in this case, a class action challenging certain provisions in automobile leases issued by General Electric Capital Auto

Lease, Inc. (GECAL) under the Consumer Leasing Act (CLA), 15 U.S.C. § 1667 et seq. and various Illinois statutes prohibiting unfair and deceptive trade practices. After this case was filed in the Northern District of Illinois in December 1994 at the behest of named representatives Stacey A. Williams and others, the named parties to the lawsuit consented to proceeding before a magistrate judge under 28 U.S.C. § 636(c). The court eventually certified a nationwide class, and the case was resolved when the district court approved a settlement ("the Williams suit"). Later, Gwynne Dooner and others filed essentially the same suit as a new class action against GECAL in the Middle District of Florida ("the Dooner suit"). GECAL responded (among other ways) by filing a motion in the Northern District of Illinois to enjoin further prosecution of the Dooner suit. Still acting for the district court, the magistrate judge (who has since been appointed to the United States Bankruptcy Court) granted the injunction. The Dooner plaintiffs have appealed from that order. Before we discuss either the facts or the law relevant to that appeal, however, we must discuss two issues related to our appellate jurisdiction. Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, __, 118 S.Ct. 1003, 1012, 140 L.Ed.2d 210 (1998).

I

We first explore the question whether the fact that this case was adjudicated by a magistrate judge, acting pursuant to the consent of the named class representatives, has any effect on the binding effect of the judgment on unnamed class members. Article III, § 1 of the Constitution creates a personal right in litigants to have their cases heard before an adjudicator whose independence and impartiality is guaranteed by virtue of being cloaked with certain constitutional protections. See Commodity

Futures Trading Comm'n v. Schor, 478 U.S. 833, 847-49, 106 S.Ct. 3245, 92 L.Ed.2d 675 (1986); Brook, Weiner, Sered, Kreger & Weinberg v. Coreq, Inc., 53 F.3d 851, 852 (7th Cir.1995). Although magistrate judges do not enjoy the structural Article III protections of lifetime tenure or a constitutional guarantee against salary reductions, cf. 28 U.S.C. § 631, they are nevertheless permitted to decide civil cases. Coreq, Inc., 53 F.3d at 852; 28 U.S.C. § 636(c)(1). The unanimous and voluntary consent of the parties is the constitutional "linchpin" of this power. Adams v. Heckler, 794 F.2d 303, 307 (7th Cir.1986). This means that parties added to a case after the original litigants have filed a consent under § 636(c) must also agree to the submission of the case to the magistrate judge; if they do not, then the case must be returned to a district judge. Coreq., Inc., 53 F.3d at 852. See, e.g., Mark I, Inc. v. Gruber, 38 F.3d 369 (7th Cir.1994) (new defendants added); Jaliwala v. United States, 945 F.2d 221, 223-24 (7th Cir.1991) (intervenor).

If, therefore, unnamed members of a class stood in the same position as new "parties" to the suit, it would be clear that they could not be bound by a magistrate judge's adjudication unless they expressly consented to the magistrate judge's exercise of authority. From a practical standpoint, such a rule would virtually eliminate § 636(c) referrals to magistrate judges in all potential class actions, because it would de facto transform all such cases into "opt-in" style actions and fundamentally change the capacity of the judgment (whether the result of full-blown litigation or settlement) to bind both sides in the absence of express consents. This radical result would follow, however, only if unnamed members of a class are properly considered as additional "parties" to the suit. If, instead, they are more accurately regarded as having something less than full party

status, the need for their express consent also changes. This is because, not surprisingly, the lack of consent of someone who is not a party to an action does not deprive the magistrate judge of jurisdiction. See, e.g., United States v. Real Property, 135 F.3d 1312, 1317 (9th Cir.1998) (record owner of real property that was subject of in rem forfeiture proceeding); Neals v. Norwood, 59 F.3d 530, 532 (5th Cir.1995) (unserved defendant); EEOC v. West Louisiana Health Svcs., Inc., 959 F.2d 1277, 1279-80 (5th Cir.1992) (consolidated suit against single defendant where one plaintiff did not consent but consolidated cases still retained individual identities); Giove v. Stanko, 882 F.2d 1316, 1318 (8th Cir.1989) (non-intervening judgment debtor who was not automatically a necessary party to a garnishment proceeding). See also 28 U.S.C. § 636(c) (requiring "consent of the parties") (emphasis added).

Generally speaking, absent class members are not "parties" before the court in the sense of being able to direct the litigation. See, e.g., In re Brand Name Prescription Drugs Antitrust Litig., 115 F.3d 456, 458 (7th Cir.1997) (no right to appeal absent intervention); Kamilewicz v. Bank of Boston Corp., 100 F.3d 1348, 1351-52 (7th Cir.1996) (Easterbrook, J.) (dissent from denial of rehearing en banc). See generally 3 Herbert Newberg & Albert Conte, Newberg on Class Actions § 16.01 (3d ed.1992) (listing situations in which courts have treated absent class members as "parties" and "non-parties"). Instead, the named representative — in this case Stacey Williams — is the "party" to the lawsuit who acts on behalf of the entire class, including with regard to the decision to proceed before a magistrate judge. This is an inherent part of representational litigation. See generally Diane P. Wood, "Adjudicatory Jurisdiction and Class Actions," 62 Indiana L.J. 597 (1987). An unnamed class member who prefers an Article III forum has two options. First,

she may apply to the district court to intervene under Rule 24(a), become a party to the lawsuit, and then exercise her right to withhold her consent to proceed before the magistrate. Or, after the entry of final judgment, the unnamed class member can raise a collateral attack based on due process against the named representative's decision to consent under § 636(c). In both cases, the key question is the same: Is (or was) the decision to consent made by a party who adequately represents (or represented) the absentee's interests? (We assume for present purposes that both these options can be exercised before the magistrate judge, if the case is otherwise properly before her. It may also be open to the unnamed class members to present such an argument directly to an Article III judge of the district court; because the record does not indicate that the plaintiffs made any effort to do so here, we offer no definitive view on the matter.) If in the first kind of case the district court concludes that the named representative is not an adequate representative (and that the other requirements of Rule 24 have been met), it should grant the application to intervene. See Fed. R. Civ. P. 24(a). Cf. United States v. City of Milwaukee, 144 F.3d 524, 528 (7th Cir.1998). Alternatively, the unnamed class member could try to show in a collateral attack that the decision to proceed before a magistrate judge was a matter on which there was a potential (or, in the light of the fully developed record, an actual) significant intra-class conflict and that the notice the absentee received was inadequate to inform her of this conflict. Cf. Hansberry v. Lee, 311 U.S. 32, 61 S.Ct. 115, 85 L.Ed. 22 (1940); Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985). See also Pacemaker Diagnostic Clinic of America v. Instromedix, Inc., 725 F.2d 537, 545 (9th Cir.1984) (en banc) (Kennedy, J.) (one reason district court should consider voiding a reference to a magistrate sua sponte is where "rights of numerous parties not present

before the court might be affected by the decision"). In this case, the "Notice of Pendency of Class Action, and Notice of Proposed Settlement and Hearing Thereon" that went to the unnamed Williams class members clearly indicated that the lawsuit was before "Magistrate Judge Joan H. Lefkow." Due process requires no more. More broadly, we see nothing here that presents an Article III problem with the jurisdiction of the district court to enter the injunction from which the appeal has been taken.

One final jurisdictional quirk remains to be considered. The consent form the parties executed on May 9, 1995, contained a section entitled "Election of Appeal to a United States District Court," which both Williams and GECAL also signed. Until very recently, parties who had consented to having their case tried by a magistrate judge had the additional option of electing at that time to take their appeal to the district court; if the parties took that second election, further appeal to the circuit court was available only by way of a petition for leave to appeal. See 28 U.S.C. § 636(c)(4) (1996), deleted by 110 Stat. 3847, 3850 § 207 (Oct. 19, 1996). Cf. Fed. R. Civ. P. 74 (1997), abrogated by Supreme Court order, 171 F.R.D. 679, 691-92 (April 11, 1997) (effective Dec. 1, 1997) (abrogating Federal Rule implementing the prior statutory provision). As a result of a 1996 amendment to the statute, this election of appellate forum is no longer available, and appeals from magistrate judge decisions tried by consent follow the same pattern as appeals from judgments of district courts. See 28 U.S.C. § 636(c) (1998); Fed. R. Civ. P. 73(c) (1998). Although Williams made the (c)(4) election to appeal only to the district court — and as we discussed earlier, by doing so acted on behalf of the absent class members — the Dooner plaintiffs appealed the anti-suit injunction against the Florida lawsuit directly to

us. Their notice of appeal was filed on February 2, 1997, however, which was after the effective date of the Federal Courts Improvement Act of 1996. Because the change repealing § 636(c)(4) was purely jurisdictional and did not affect "substantive rights," cf. Landgraf v. USI Film Prods., 511 U.S. 244, 274, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994), we hold that the prior designation of the district court as the appellate forum was superseded retroactively by statute and therefore of no effect. See Darnell v. Rossen, 116 F.3d 187, 188 (6th Cir.1997) (per curiam) (same). Accordingly, we conclude that we have jurisdiction over this appeal from the magistrate judge.

II

To understand the Dooner plaintiffs' arguments on appeal, it is necessary to review the substantive claims of the Williams action. The Williams plaintiffs alleged that GECAL had violated the CLA and state law in several ways. First, they claimed that GECAL had failed adequately to disclose the substantial early termination and default charges in its standard form automobile leases, in violation of 15 U.S.C. § 1667a. See also Regulation M, 12 C.F.R. §§ 213.3, 213.4 (1998). Second, they alleged that the early termination charges under the leases were unreasonable, in violation of 15 U.S.C. § 1667b(b), and that the lessee's right under 15 U.S.C. § 1667b(c) to demand an appraisal of the residual value of the automobile upon early termination was, as a practical matter, unavailable in certain cases. (Specifically, the Williams plaintiffs complained that although the lessee had 10 days to obtain an appraisal before early termination, the right of appraisal as a practical matter was illusory for cases in which early termination was triggered by lessee default, since GECAL could unilaterally order early termination upon default and then repossess the car.) No class

was certified until a settlement had been prepared and submitted to the court, which occurred in July 1995.

At that time, the court provisionally certified a settlement class described as:

> all persons in the United States other than residents of Connecticut who, between January 1, 1987, and July 21, 1995, entered into an automobile lease assigned to General Electric Capital Auto Lease, Inc. ("GECAL") and written on a lease form prepared by GECAL which bears one of the identification numbers [listed in the Settlement Agreement]. . . .

The court certified the class under Fed. R. Civ. P. 23(b)(3), which meant of course that absentee class members had the right to opt out of the settlement. All class members received notice by mail of the proposed settlement, and were given until November 1, 1995, to opt out or to provide notice of their intent to object to the settlement. Approximately 1,300 class members elected to opt out.

The court conducted a fairness hearing on the settlement on November 29, 1995. On January 4, 1996, it entered an order certifying the class as it had provisionally been defined and it approved the settlement. Williams v. General Electric Capital Auto Lease, Inc., No. 94-C-7410, 1995 WL 765266 (N.D.Ill. Dec. 26, 1995) (memorandum decision). Under the agreement, settling class members were entitled to receive either a $50 certificate applicable against any early termination fee, or a $100 certificate applicable against payments on a new auto lease. (One of the objectors at the fairness hearing had labeled this arrangement a "joke," pointing out that his early termination

fee was more than $1,000.) The settlement agreement also contained the following language releasing the claims of the class members against GECAL:

> The settlement embodied in this Agreement shall apply to all persons in the Class as defined in paragraph 3(a) hereof and shall be in complete and final settlement of all claims asserted in the Actions, and all claims which might have been asserted in the Actions, on behalf of the plaintiffs and the Class against GECAL, its successors and assigns, . . . arising out of disclosures made on or in connection with vehicle leases assigned to GECAL, out of the reasonableness or validity of the charges and other terms contained in such leases, and out of the collection or attempted collection of charges imposed under such lease forms, except those claims excluded in paragraph 2(h) hereof.

(The excluded claims referred to those based on representations other than the written terms of the lease, vehicle defect claims, property damage or personal injury claims, and repossession or collection claims not based on the lease. They are not at issue here.) The court's final judgment roughly tracked this language and ordered that all claims asserted in the action and all claims that might have been asserted in it were dismissed with prejudice (with a similar set of exceptions). The January 4, 1996, final judgment also enjoined all "[c]lass members who did not opt out of the class . . . from commencing, prosecuting, or asserting by way of counterclaim or defense against GECAL any of the claims dismissed, settled or barred pursuant to this order."

Given that language, one might wonder under what theory the Dooner plaintiffs began their class action in Florida on July 9, 1996, since they had each signed their GECAL lease between January 1, 1987, and July 21, 1995, and thus fell within the description of the class that the Williams court had used. Also, even though they apparently received the required notices about the class, none of them had opted out of the Williams litigation. What distinguished the Dooner plaintiffs was that as of July 21, 1995, the date the court provisionally approved the class certification and settlement, none of the members of the Dooner class had yet terminated their leases early or been assessed penalties. (This statement is an accurate description for the named representatives Suzanne and James Harper, Lisa and John Ward, and Dudley Williams — no relation to Stacey Williams of the Williams class — who each paid anywhere from $1,237 to $9,728 in early termination charges only after the Williams settlement. Gwynne Dooner herself, however, appears to be an improper plaintiff despite being the eponymic class representative. Although she claimed in her appellate brief that she was not notified by GECAL until August 1995, her story was otherwise when the Florida litigation began. Paragraph 29 of the amended Florida complaint asserts that "[o]n July 5, 1995, Dooner terminated the lease agreement and was assessed early termination charges." Based on this factual admission, Dooner is identically situated to the Williams settlement class. This utterly undercuts her individual claim because, as of July 21, 1995 (the date the settlement was entered), she had already terminated her lease and she thus clearly fell within the class she claims Williams reached. Yet in both its briefs in this court and below, Dooner's attorney has ignored the face of the Florida complaint and argued that Gwynne Dooner's "lease was terminated after the class period closed." Strangely, GECAL's attorney did not notice the defect.

Appendix A

For the sake of consistency with the district court's language, we will continue to refer to the class representatives here as the "Dooner" plaintiffs, but the reader should bear in mind that the defect we have noted means that Gwynne Dooner herself is not one of them.)

In September 1996, GECAL moved in the Northern District of Illinois for an order enforcing the final judgment in Williams and enjoining the Florida action. The named Dooner plaintiffs appeared through their attorney to contest GECAL's motion. They argued that because their leases had not been terminated by July 21, 1995 (the date specified in the order certifying the class), their claims against GECAL had not been justiciable at the time the Williams settlement was approved. Accordingly, they reasoned, any effort to include them in the Williams class or to bind them to the Williams settlement was a nullity. Alternatively, conceding that they received the opt-out notice, the plaintiffs also argued that: (1) the opt-out provided was illusory as to them, and thus inconsistent with due process, since as holders of unterminated leases "they had no knowledge of an early termination claim against GECAL . . . much less the value of the claim, or whether they wished to release such a claim"; and (2) they were inadequately represented by the named Williams plaintiffs because of a vague intra-class conflict. The district court rejected their justiciability arguments and entered GECAL's requested injunction without expressly entertaining the Dooner plaintiffs' collateral attack on the Williams settlement. The Dooner plaintiffs have now brought their appeal to us.

III

In order to resolve the appellants' justiciability argument, we must answer several questions: first, were the Dooner

plaintiffs included within the class certified in Williams; second, did they have any claim before the court that was justiciable at that time; and third, was the Williams court empowered to enter an order affecting any future claims of the members of the Dooner class that would not have been ripe for adjudication at the time the Williams order was entered. These are all legal questions, for which our review is de novo. Compare In re American Continental Corp./Lincoln Savings & Loan Securities Litig., 49 F.3d 541, 543 (9th Cir.1995) (district court's construction of class definition language, like its construction of a statute or a contract, is reviewed de novo) with Shvartsman v. Apfel, 138 F.3d 1196, 1201 (7th Cir.1998) (district court's decision to certify a class is reviewed for an abuse of discretion). See also Sierra Club v. Marita, 46 F.3d 606, 610-11 (7th Cir.1995) (justiciability reviewed de novo). Only if the answer to all three of those questions is yes may we consider the district court's anti-suit injunction, which we would review under the abuse of discretion standard.

As far as the record shows, each of the appellants before us falls squarely within the class certified in Williams, which included individuals (other than Connecticut residents) who between January 1, 1987, and July 21, 1995, entered into a standard automobile lease prepared by, and assigned to, GECAL. It is also uncontested that none of the Dooner plaintiffs exercised his or her right to opt out of the Williams litigation. They do not argue that the notice they received was formally insufficient under Fed. R. Civ. P. 23(c)(2), and such an argument would be quite hard to sustain in any event given that some 1,300 people did opt out. We consider below, however, the Dooner plaintiffs' argument that the notice was "constitutionally" insufficient because a person who had not yet terminated the lease and been assessed a penalty would not

know whether she had an early termination claim against GECAL and if she should pursue such a claim personally or through the class. For present purposes, it is enough to observe that the Dooner plaintiffs fell within the class description used in Williams.

A somewhat more difficult question is whether the Dooner plaintiffs had any claims that were presently justiciable at the time of the Williams litigation, settlement, and judgment. Returning to the Williams complaint, recall that there were two theories raised under federal law: (1) the claim that GECAL had failed to disclose, in an understandable manner, the substantial early termination and default charges in its standard form automobile leases; and (2) the substantive claims that the early termination charges under the leases were unreasonable and that the appraisal right under the lease was illusory. We agree with the Dooner plaintiffs that there are legitimate questions about the ripeness of the second type of claim in their cases. None of the Dooner plaintiffs had tried to terminate a lease, and so it might have been unclear how the appraisal procedures would have worked for them, or whether the amount of the early termination charge would have been reasonable. These claims arguably never actually arose and thus, as of the time of the Williams settlement, were only hypothetically available. Cf. Highsmith v. Chrysler Credit Corp., 18 F.3d 434 (7th Cir.1994) (some doubt as to whether claim by plaintiff who had not terminated early or even expressed a desire to do so would be justiciable).

If that were all we had, then the twin problems of standing and justiciability of future claims with which other courts have grappled might be squarely presented. See, e.g., Georgine v. Amchem Products, Inc., 83 F.3d 610, 635-38 (3d Cir.1996)

(Wellford, J., concurring) (arguing that claims brought by exposure-only asbestos plaintiffs are non-justiciable for lack of case or controversy), aff'd. sub nom., Amchem Prod., Inc. v. Windsor, 521 U.S. 591, __, 117 S.Ct. 2231, 2244, 138 L.Ed.2d 689 (1997) (recognizing, but declining to reach, the justiciability question); In re Asbestos Litig., 90 F.3d 963, 1015-26 (5th Cir.1996) (Smith, J., dissenting), majority opinion vacated for consideration in light of Amchem, Flanagan v. Ahearn, __ U.S. __, 117 S.Ct. 2503, 138 L.Ed.2d 1008 (1997), aff'd. on remand, 134 F.3d 668 (5th Cir.1998) (per curiam), cert. granted sub nom., Ortiz v. Fibreboard Corp., __ U.S. __, 118 S.Ct. 2339, 141 L.Ed.2d 711 (1998). See generally John C. Coffee, Jr., Class Wars: The Dilemma of the Mass Tort Class Action, 95 Colum. L.Rev. 1343, 1422-33 (1995); Note, And Justiciability for All?: Future Injury Plaintiffs and the Separation of Powers, 109 Harv. L.Rev. 1066 (1996). Our case differs from the problems those courts discussed, however, because it is clear that the Dooner plaintiffs had at least one presently justiciable claim at the time of the Williams settlement: their claim that the disclosure provisions in the leases violated the CLA. See Highsmith, 18 F.3d at 438-40 (reaching the merits of a CLA disclosure claim even though the plaintiff had not actually terminated his lease early). That claim, as even counsel for the Dooner plaintiffs admits, was properly before the Northern District of Illinois in Williams and was subject to resolution in the settlement. We can therefore narrow the issue before us to whether any injunction against the Dooner plaintiffs' Florida litigation could reach only their disclosure claims, or whether the Illinois court could properly enjoin the entire Florida suit.

In our view, the court not only could address the entire suit, but this was the appropriate step for it to take. This

conclusion follows from the law relating to releases of claims. As the Ninth Circuit wrote in an opinion addressing the massive class action settlement of the claims arising from the bond defaults of the Washington Public Power Supply System:

> [t]he weight of authority holds that a federal court may release not only those claims alleged in the complaint, but also a claim "based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented and might not have been presentable in the class action."

Class Plaintiffs v. City of Seattle, 955 F.2d 1268, 1287 (9th Cir.1992) (emphasis in original), quoting TBK Partners, Ltd. v. Western Union Corp., 675 F.2d 456, 460 (2d Cir.1982). Admittedly, both the WPPSS case and TBK Partners involved class settlements in federal court releasing state law claims that might not have been cognizable in federal court — as opposed to the release of claims that were non-justiciable in the "case or controversy" sense. However, because the logic of both cases has been subsequently applied to situations where state court class settlements released claims of exclusive federal subject matter jurisdiction, see, e.g., Matsushita Elec. Indus. Co. v. Epstein, 516 U.S. 367, 116 S.Ct. 873, 879, 881-82, 134 L.Ed.2d 6 (1996); Grimes v. Vitalink Communications Corp., 17 F.3d 1553, 1563-64 (3d Cir.1994); Nottingham Partners v. Trans-Lux Corp., 925 F.2d 29, 34 (1st Cir.1991) (all three cases citing TBK Partners with approval), it seems reasonable to read the WPPSS and TBK Partners cases as pertaining broadly to the law of "releases" rather than narrowly to the issue of federal court jurisdiction. We also note, in this connection, that nothing in the Supreme Court's Amchem decision suggested that the

federal courts lacked the Article III power to settle future claims of class members. Instead, the Court simply did not reach the Article III justiciability issues because it found that the question whether the settlement class should have been certified was "logically antecedent" to the existence of the Article III issues. See Amchem, 117 S.Ct. at 2244.

Here, the substantive claims of the Dooner plaintiffs are based on the identical factual predicate (the leases and the potential for an early termination penalty) as the disclosure claims that we have noted were properly before the Williams court. It is possible that the appraisal procedure and the computation of the early termination payments might be ministerial at any given point in time. If that were true, then the Dooner plaintiffs perhaps could have assessed their potential liability for early termination even at the time of the Williams settlement; at a minimum, the range of statutory damages available to individual plaintiffs should have been clear. See 15 U.S.C. § 1640(a)(2)(A). We need express no opinion on these questions, however, because even if the claims were not ripe, they were closely enough related to the disclosure claims that everything could be resolved in the settlement. It is not at all uncommon for settlements to include a global release of all claims past, present, and future, that the parties might have brought against each other. See, e.g., Fair v. International Flavors & Fragrances, Inc., 905 F.2d 1114, 1115-16 (7th Cir.1990) (even though one claim was technically "nonexistent" at the time of settlement, the parties' general release was enforceable because circumstances showed that employee releasing her claims had known of, and intentionally resolved, the potential dispute that might have existed), as clarified by, Lynn v. CSX Transp., Inc., 84 F.3d 970, 975-77 (7th Cir.1996). That is all that was done here.

Finally, we turn to the plaintiffs' due process attack on the adequacy of representation and opt-out notice in the Williams certification. The plaintiffs' claim regarding adequacy of representation, which appeared in their brief in a solitary footnote, is insufficiently developed on appeal and is therefore waived. See Otto v. Variable Annuity Life Ins. Co., 134 F.3d 841, 854-55 (7th Cir.1998). The plaintiffs' second argument — that their opt-out rights were illusory since as holders of unterminated leases they lacked knowledge of what claims they held against GECAL and the value of those claims — merits scarcely more discussion. Although the court below did not expressly rule on the plaintiffs' due process collateral attack on certification, a close reading of the opinion indicates that it did so implicitly when it found that:

> The [Dooner] . . . plaintiffs had the necessary incentive to read the notice of proposed settlement [in Williams] carefully. The [Dooner] plaintiffs were notified of the terms of the settlement and of the fairness hearing. Further, they were adequately equipped to make a reasoned decision, based on the likelihood of early termination and the costs/benefits of a separate legal challenge, regarding the relative merits of participating in the class or opting out.

Similarly, in its memorandum decision after the fairness hearing approving the settlement, the district court rejected exactly the same due process claim the Dooner plaintiffs now seek to raise, when it was not persuaded by objector Steven Lawson's argument that "the notice did not provide information on what early termination charges customarily amount to or how they are determined so as to assist a provisional class member in deciding whether to . . . opt out." Thus, in the end,

the plaintiffs' due process attack on certification is little more than a gussied up version of their justiciability argument, and it fails for the same reason: all of the Dooner plaintiffs had a cognizable disclosure claim at the time of the Williams settlement that placed them on inquiry notice about the entire settlement.

With no justiciability or due process bars standing in its way, the district court did not abuse its discretion in entering an injunction against the Florida litigation. Indeed, it is hard to see how anything less than a comprehensive injunction could have protected the Illinois settlement. No one can say for sure what the settlement would have looked like if GECAL had thought that it was really resolving only the disclosure claims and leaving open a large number of substantive claims, but it is safe to say it probably would have been different. The Dooner plaintiffs did not sign their leases after the closing date for the Williams class, and thus they cannot avoid class membership that way. Had they wished to take a wait-and-see approach to their individual claims, they could have objected or opted out of the class along with the 1,300 others who took that approach. They did not, and the lower court was therefore well within its authority to prohibit them from re-litigating their claims in another forum. We therefore AFFIRM the district court's injunction.

APPENDIX B — RULING ON DEFENDANT'S MOTION TO ENFORCE JUDGMENT AND FOR INJUNCTION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED JANUARY 16, 1997

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 94 C 7410

STACEY WILLIAMS, et al.,

Plaintiffs,

vs.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC.,

Defendant.

RULING ON DEFENDANT'S MOTION
TO ENFORCE JUDGMENT AND FOR INJUNCTION

Joan H. Lefkow, Magistrate Judge

Defendant General Electric Capital Auto Lease, Inc. ("GECAL"), has moved for an order enforcing this court's Final Judgment and Order of January 4, 1996 ("the Judgment") by enjoining Gwynn R. Dooner, Dudley E. Williams, Jr., Suzanne E. Harper, James S. Harper, John A. Ward, Jr., and Lisa G. Ward (collectively, "the Florida plaintiffs"), from continuing the prosecution of civil action 96-720-CIV-J-99(H) in the

Appendix B

United States District Court for the Middle District of Florida, Jacksonville Division ("the Florida action"). GECAL contends that the Florida action asserts claims finally resolved here by this court and that the Florida plaintiffs are members of the *Williams* class. The Florida plaintiffs have appeared with leave of court to oppose the motion and assert their position that they are not members of the class bound by the *Williams* Judgment. *Williams* class plaintiffs in this case have joined GECAL in asserting that the Florida plaintiffs are bound by the Judgment.

The record reflects as follows: GECAL was a defendant in the class action brought by Stacey Williams, et al., and concluded by the Judgment. As summarized in this court's Memorandum Decision of December 19, 1995,

> The complaint allege[d] that GE Capital and its agents imposed substantial charges for early termination and default under GE Capital's leases without disclosing those charges in comprehensible terms as required by the federal Consumer Leasing Act, 15 U.S.C. §§ 1667 *et seq.*, and the Act's implementing [regulation] (citation omitted). The complaint allege[d] additional Consumer Leasing Act violations, (1) that the lease form fails to identify express warranties and guarantees made by the manufacturer as required by 12 C.F.R. § 213.4(g)(7), (2) that the termination charges were unreasonable, and (3) that the lessee's disclosed right to demand that realized value be determined by appraisal was as a practical matter unavailable. The complaint further allege[d] that the same omissions and commissions constituted violations of Illinois statutes prohibiting unfair and deceptive practices,

> and also that the failure to disclose the "capitalized cost" of its leased vehicles — the price of the vehicle used to derive all of the numbers in the lease — violated the Illinois Consumer Fraud Act, 815 ILCS 505/2.

On July 21, 1995, a settlement agreement was reached in the *Williams* action, subject to approval of this court. Plaintiffs and GECAL moved for preliminary approval of the settlement and to provide notice to the class. On July 26, 1995, this court entered an order provisionally certifying a class

> consisting of all persons in the United States other than residents of Connecticut who, between January 1, 1987 and July 21, 1995, entered into an automobile lease assigned to General Electric Capital Auto Lease, Inc. ("GECAL") and written on a lease form prepared by GECAL which bears one of the identification numbers listed on Schedule A attached to the Settlement Agreement.

The order of July 26, 1995 set a fairness hearing on November 29, 1995. The order further provided for notice of the proposed settlement, the fairness hearing, the settlement claims procedure and the right of class members to opt out and directed that such notice be mailed to all class members by September 30, 1995. Class members were given until November 1, 1995 to opt out or to provide notice of their intent to object to any part of the settlement. The notice also provided a proof of claim form for class members to make a claim subject to approval of the settlement. That form made provisions for claimants whose leases had not yet terminated as well as claimants whose leases had terminated.

Appendix B

The class notice, as approved by this court, was sent and an affidavit of mailing was filed.

This court held a fairness hearing on November 29, 1995. At that hearing, counsel for the class represented that approximately 1,300 class members had opted out. The parties agreed to extend the opt-out deadline to January 31, 1996, after which class counsel was to provide a final opt-out list. The Florida plaintiffs are not on the final opt-out list.

During the fairness hearing, this court heard the arguments of counsel for the parties and the objectors regarding the fairness of the settlement. The court took the motion for final approval of the settlement under advisement. On December 13, 1995, this court called counsel for plaintiffs and GECAL to a status conference and raised certain questions. Specifically, this court raised questions about the scope of the release to be given GECAL by the class. This court requested both sides to submit a supplemental statement regarding the scope of the release.

On January 4, 1996 this court approved the settlement as fair, reasonable and adequate, and finally certified the class as it had been provisionally certified, and entered the Judgment. The January 4 order further provided:

> This action is hereby dismissed, with prejudice and without costs, and all claims asserted in this action, and all claims which might have been asserted in this action by plaintiffs and the Class against General Electric Capital Auto Lease, Inc. ("GECAL"), its successors and assigns, and its assignors, agents, affiliates, employees, directors and officers, both past and present, arising out of

> disclosures made on or in connection with vehicle leases assigned to GECAL, out of the reasonableness or validity of the charges and other terms contained in such leases, and out of the collection or attempted collection of charges imposed under such lease forms, are hereby dismissed with prejudice and without costs, except that the following claims are not dismissed, settled or barred hereby: (i) claims against assignors of GECAL based upon representations other than the written terms of the lease, (ii) claims based upon vehicle defects, property damage, personal injury or death, repossession or recovery of the leased vehicle, or collection practices other than collection or attempted collection of amounts specified in the lease, or (iii) claims concerning application of security deposits or entitlement to profits or other economic benefits realized in connection with security deposits (whether or not characterized as such in the lease) and lease disclosures regarding such entitlement. This order does not affect other rights and obligations of Class members and GECAL under their leases.

The Judgment enjoined "all class members who did not opt out of the class . . . from commencing, prosecuting, or asserting by way of counterclaim or defense against GECAL any of the claims dismissed, settled or barred pursuant to this order."

In July, 1996, the Florida plaintiffs filed the Florida action. Each plaintiff allegedly entered an automobile lease that was assigned to GECAL. Plaintiffs claimed to enter these leases

November 23, 1993 (Dooner), July 11, 1994 (Williams), June 8, 1993 (Harpers), and January 25, 1995 (Wards). Because each of the Florida plaintiffs entered automobile leases assigned to GECAL between January 1, 1987 and July 21, 1995 and did not opt out of the class, they are members of the class in *Williams*.

The Florida plaintiffs terminated their leases and were assessed early termination charges between July 5, 1995 and March 12, 1996. Thus, for the most part, their claims concerning unreasonable termination charges, 15 U.S.C. §1667b(b), accrued after provisional approval of the proposed settlement, after receiving notice of the proposed settlement and, for some, after entry of the Judgment.

The Florida action claims that GECAL violated federal and state law, including the Consumer Leasing Act, by making improper disclosures and by establishing unreasonable early termination charges.

The Florida plaintiffs seek a determination that they are not members of the *Williams* class because they terminated their leases and were assessed early termination charges after the *Williams* settlement on July 21, 1995. They contend that because their leases were not terminated by July 21, 1995, they did not have justiciable claims on that date and the effort to include them in the class is a nullity.

The court concludes that the Judgment and Release entered here properly bar the claims being asserted in the Florida action. It is significant that each of the Florida plaintiffs falls squarely within the definition of the *Williams* class and at the time of the provisional settlement and issuance of notice to the class,

they in fact had a justiciable claim against GECAL regarding the early termination provisions in their leases.[1] Thus, the Florida plaintiffs had the necessary incentive to read the notice of proposed settlement carefully. The Florida plaintiffs were notified of the terms of the settlement and of the fairness hearing. Further, they were adequately equipped to make a reasoned decision, based on the likelihood of early termination and the costs/benefits of a separate legal challenge, regarding the relative merits of participating in the class or opting out. Yet, they neither opted out of the class, nor attended the hearing to contest the settlement, nor otherwise raised concerns regarding the fairness of the settlement or the adequacy of the class representation. They should not now be permitted to relitigate settled issues central to the *Williams* class action.

The cases in which representative plaintiffs with unaccrued claims were found not to have justiciable claims are distinguishable from those considering the effect of a judgment with respect to a class of people, some of whom may have unaccrued claims. For example, in *In Re Asbestos Litigation*, 90 F.3d 963 (5th Cir. 1996), the appellate court upheld the district court's approval of a class settlement that released the class members' claims based on the defendant's liability for its asbestos products. Implicitly at least, the release extended to potential future claims of "exposure only" class members — those who had been exposed to asbestos but had not developed any asbestos-related illness. In other circumstances, as well, courts have properly approved class settlements releasing claims over which the court did not otherwise have jurisdiction. *See e.g., Nottingham Partners* v. *Trans-Lux Corp.*, 925 F.2d 29, 34 (1st Cir. 1991) (recognizing that a court can

1. Each had a justiciable claim for improper disclosure of early termination provisions.

release class claims that it could not otherwise adjudicate); *Matsushita Electronic Industrial Co.* v. *Epstein*, __ U.S. __, 116 S. Ct. 873, 876-77, 881 (1996) (state court can extinguish federal law claims of absent class members as part of a settlement even though it had no jurisdiction to adjudicate those claims).

The claims now asserted in the Florida action are barred by the Judgment and the Release entered here. The prosecution of those claims violates this court's January 4, 1996 order enjoining all class members from prosecuting such claims.

This court has authority to issue an injunction to enforce the terms of its Judgment. *Thompson* v. *Edward D. Jones & Co.*, 992 F.2d 187, 189 (8th Cir. 1993); *In Re VMS Securities Litigation*, Fed. Sec. Law Rptr ¶ 97, 301 (N.D. Ill. 1992). Because the Judgment included injunctive relief, this court retains jurisdiction to enforce that injunction. *United States* v. *Fisher*, 864 F.2d 434, 436 (7th Cir. 1988); *McCall-Bey* v. *Franzen*, 777 F.2d 1178, 1183 (7th Cir. 1985).

WHEREFORE, Gwynn R. Dooner, Dudley E. Williams, Jr., Suzanne E. Harper, James S. Harper, John A. Ward, Jr., and Lisa G. Ward are hereby enjoined from prosecuting that certain action currently pending in the United States District Court for the Middle District of Florida, Jacksonville Division, Number 96-720-CIV-J-99(H).

ENTER:

s/ Joan Humphrey Lefkow
JOAN HUMPHREY LEFKOW
United States Magistrate Judge

Dated: January 16, 1997

APPENDIX C — MINUTE ORDER FORM OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS DATED JANUARY 16, 1997 AND FILED JANUARY 21, 1997

UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF ILLINOIS

Name of Assigned Judge or Magistrate Judge	Joan H. Lefkow

* * *

Case Number	94 C 7410
Date	January 16, 1997
Case Title	Williams, etal vs. Gen Elec Capital Auto Lease

* * *

DOCKET ENTRY:

* * *

(10) ☒ [Other docket entry] Defendant's motion to enforce judgment and for injunction [115-1] is granted. Enter ruling on defendant's motion to enforce judgment and for injunction.

(11) ☒ [For further detail see

* * *

☒ order attached to the original minute order form.]

Appendix C

* * *

☒ Docketing to mail notices.

* * *

APPENDIX D — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED JULY 26, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 94 C 7410
Hon. James H. Alesia
Magistrate Lefkow

STACEY WILLIAMS, et. al.,

Plaintiffs,

v.

GENERAL ELECTRIC CAPITAL
AUTO LEASE, INC., et. al.,

Defendants.

ORDER

This matter coming on to be heard on the Joint Motion for Preliminary Approval of Settlement and Notice to Class, the Court having reviewed such motion and the Settlement Agreement attached thereto, and the supporting papers submitted therewith, and the Court being fully advised in the premises, it is ordered that:

1. A class is provisionally certified for settlement purposes only, consisting of all persons in the United States other than

residents of Connecticut who, between January 1, 1987, and July 21, 1995, entered into an automobile lease assigned to General Electric Capital Auto Lease, Inc. ("GECAL") and written on a lease form prepared by GECAL which bears one of the identification numbers listed on Schedule A attached to the Settlement Agreement. Persons who timely elect to exclude themselves from the Class pursuant to the Notice of Proposed Class Settlement authorized herein shall not be members of the Class.

2. The Court certifies Stacey Williams, Staci Beasley, Peter Richard, Gary Blank, Salvatore Carone and James Georgias as representatives of the Class.

3. The Court certifies Daniel A. Edelman, Lawrence Walner, and their respective law firms as counsel for the Class.

4. The proposed settlement as set forth in the Settlement Agreement executed by the parties is preliminarily approved as fair, reasonable, and adequate, subject to a hearing as provided herein for final approval.

5. A hearing is hereby set for November 29, 1995, at 10:00 a.m., to determine whether the proposed settlement is fair, reasonable, and adequate, and should be finally approved, and to consider an application by Class Counsel for an award of attorneys' fees and expenses.

6. Notice of the proposed settlement, of such hearing, and of the procedure for submitting claims shall be given by mailing by first-class mail the Notice of Pendency of Class Action, and Notice of Proposed Settlement and Hearing Thereon and the Proof of Claim in the form attached as Exhibit A to the

Appendix D

Settlement Agreement, individually addressed to all persons meeting the above class definition at his or her last address available in GECAL's records on or before September 30, 1995, which Notice the Court finds to be complete and adequate in all respects for the purpose of notifying the Class as to the proposed settlement, the hearing thereon, and the rights of members of the Class with respect thereto. Pursuant to the terms of the Settlement Agreement, GECAL shall pay the costs of identifying Class Members and printing and mailing the Notice.

7. Any Class Member who wishes to opt out of the Class must do so in writing, which must be served on Class Counsel on or before November 1, 1995. Any Class Member who wishes to appear at the hearing and to object to the settlement or any part thereof shall file with the Clerk of the Court and serve on Class Counsel written notice of his or her intent to appear and copies of the papers supporting such objection(s) not later than November 1, 1995, in the manner provided in the above Notice.

ENTER:

Date: July 26, 1995 s/ Joan H. Lefkow
THE HONORABLE JOAN H. LEFKOW

APPENDIX E — MEMORANDUM DECISION OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED DECEMBER 19, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 94 C 7410

STACEY E. WILLIAMS, et al.,

Plaintiffs,

vs.

GENERAL ELECTRIC CAPITAL AUTO LEASE, et al.,

Defendants.

MEMORANDUM DECISION

Joan H. Lefkow, Executive Magistrate Judge:

This class action is before the court on the parties' joint motion for final approval of a class action settlement agreement. Because it is a class action, the court must determine whether the settlement is fair, reasonable and adequate for the members of the class. The following memorandum decision addresses these issues.

The complaint was filed December 13, 1994, by Stacey A. Williams, individually and on behalf of a class of consumers

who had entered into automobile leases with defendant General Electric Capital Auto Lease, Inc ("GE Capital" or "GECAL"). In addition to GE Capital, automobile dealer Jacobs Twin Honda, Inc., was sued as an alleged agent of GE Capital. The complaint alleges that GE Capital and its agents imposed substantial charges for early termination and default under GE Capital's leases without disclosing those charges in comprehensible terms as required by the federal Consumer Leasing Act, 15 U.S.C. §§ 1667 *et seq.*, and the Act's implementing Federal Reserve Board Regulation M, 12 C.F.R. part 213. The complaint alleges additional Consumer Leasing Act violations, (1) that the lease form fails to identify express warranties and guarantees made by the manufacturer as required by 12 C.F.R. § 213.4(g)(7), (2) that the termination charges were unreasonable, and (3) that the lessee's disclosed right to demand that realized value be determined by appraisal was as a practical matter unavailable. The complaint further alleges that the same omissions and commissions constituted violations of Illinois statutes prohibiting unfair and deceptive practices, and also that the failure to disclose the "capitalized cost" of its leased vehicles — the price of the vehicle used to derive all of the numbers in the lease — violated the Illinois Consumer Fraud Act, 815 ILCS 505/2.

Plaintiffs' counsel also represented certain plaintiffs in an action originally filed in 1991 in the Circuit Court of Cook County, Illinois, which alleged similar disclosure violations on behalf of a different group of lessees. *Carone, et al. v. Sun Hyundai, et al.*, No. 91 L 11124. Defendants moved in this court to dismiss or stay this action in favor of the state court litigation, a motion which was never ruled on because this settlement intervened. The parties propose to settle both the federal and state court litigation in this court. They represent

that the Honorable John N. Hourihane, the judge presiding in *Carone*, has assented to the parties' proposal that the settlement proceed in this court and has dismissed the state court case. The parties have consented to proceed before a magistrate judge under the provisions of 28 U. S. C. § 636(c).

The key terms of the settlement are as follows:

The settlement is entered into on behalf of a class consisting of all persons in the United States other than residents of Connecticut, who, on or after January 1, 1987, and prior to July 21, 1995, entered into an automobile lease assigned to GE Capital and written on a lease form prepared by GE Capital which bears one of the identification numbers listed on Schedule A to the Settlement Agreement.

Class members whose GE Capital leases either (i) were outstanding on July 21, 1995 or (ii) were early terminated on or before July 21, 1995 (*i.e.*, were terminated prior to the scheduled expiration date) and who submit a proof of claim will receive, at their option, either (a) a certificate which may be applied in the maximum amount of $50 to charges due on early termination under such leases when all other such charges are paid in full ("Early Termination Certificate") or (b) a certificate which maybe applied in the maximum amount of $100 ("New Lease Certificate") to payments on a new GE Capital automobile lease (other than security deposits).[1] Class members whose GE Capital leases were terminated on or before

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1. Although the Settlement Agreement is not explicit, the parties represent that class members whose early termination charges have already been paid in full may receive a check for $50 from GE Capital in lieu of a new lease certificate.

July 21, 1995 on or after the scheduled termination date and who submit a proof of claim receive a New Lease Certificate.

The Early Termination Certificates will be in the amount of $50 or $2.5 million divided by the number of proofs of claim requesting such certificates, whichever is less. The New Lease Certificates will be in the amount of $100 or $10 million divided by the number of proofs of claim requesting such certificates.

The $10 million in New Lease Certificates are intended as a substitute for $500,000 or $1 million statutory damages.[2] Class members who did *not* terminate their leases early did not suffer any actual damages from the early termination provisions of the leases, and are only entitled to recover statutory damages. Because there are 600,000 class members, distributing $500,000 or $1 million to the class would not provide meaningful relief. Instead, the parties agreed that $10 million in discounts on new leases would be substituted.

The class members who either terminated their leases early or have outstanding leases which they intend to terminate early (as evidenced by their election to obtain an Early Termination Certificate) are (i) entitled to their share of statutory damages and (ii) any actual damages which could be proved. The $2.5 million in Early Termination Certificates are intended in compromise of these claims. Because early termination of a lease always results in some monetary liability on the part of the lessee, the $2.5 million is the equivalent of cash.

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2. Plaintiffs contended that an addendum to the lease which GE Capital added during the time frame at issue, although making a provision entirely favorable to consumers, was nevertheless a technical violation because it added a second page.

Appendix E

The named plaintiffs in this and the *Carone* case are to receive $1,000 and release from the early termination charges on their respective leases.

Upon final judgment, and conditioned on GE Capital's performance of the settlement, each class member will release GE Capital and its current and former officers, directors, successors, predecessors, executors, administers, assigns, shareholders, affiliated companies, employees, attorneys and agents from all claims arising out of the matters complained of, namely, (i) the disclosures made on or in connection with the GE Capital leases, (ii) the reasonableness or validity of the charges and other terms contained in the leases, and (iii) the collection or attempted collection of charges imposed under such lease forms.

In addition, the settlement agreement expressly provides that several common types of lease-related claims are *not* released: (i) claims against assignors of GE Capital (car dealers and local leasing companies) based upon representations other than the written terms of the form lease and (ii) claims based upon vehicle defects, property damage, personal injury or death, repossession or recovery of the leased vehicle, application of security deposits, and collection practices other than collection or attempted collection of the amounts specified in the lease. In addition, the rights and obligations of the defendants and the class members under the leases are not affected except as specifically provided.

On July 26, 1995, the court provisionally certified the class and preliminarily approved the proposed settlement and ordered that notice of the proposed settlement be sent to all known class members on or before September 30, 1995. An affidavit of

mailing filed by GECAL represents that all known 607,000 class members have been timely notified in accordance with the order. (Approximately 29,000 mailings were undeliverable.[3])

The notice, which had been approved by the court, described the terms of the litigation, the proposed settlement, and the rights of class members. The notice further informed class members of a hearing on the settlement to be held November 29, 1995, at 10:00 a.m., stating that anyone wishing to object to the settlement could do so by submitting an objection in writing by November 1, 1995 and that they could appear at the hearing.

In response to the notice, counsel represent that approximately 1,300 class members opted out. The parties agree that class members who indicated their decision to opt out after the deadline of November 1, 1995, should nonetheless be excluded from the class and that class members may continue to exercise their right to opt out through January 31, 1996. A Supplemental Opt-Out List and Late Opt-Out List (those received after November 1, 1995) have been filed, which list identifies the individuals who have elected to be excluded from the class through the date of the hearing. ***(Counsel are directed to file a final opt-out list by February 15, 1996.)***

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3. After the November 29, 1995 hearing on the fairness of the proposed settlement (discussed below), the court convened court on December 13, 1995 to ask counsel to respond to particular questions that arose from the hearing. One question concerned the number of undeliverable notices. Counsel for GE Capital reported that 29,000 class members, approximately five percent, could not be located through forwarding addresses.

Appendix E

On November 29, the court having considered the submission of plaintiffs' counsel, GE Capital's counsel, and the objections received, entertained oral argument on the parties' motion for final approval of the class action settlement and for entry of judgment.

In deciding whether to approve a proposed settlement, the court must determine whether it is fair, reasonable, and in the best interests of the class that will be affected by it. *Bennett* v. *Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984); *Gautreaux* v. *Pierce*, 690 F.2d 616, 631 (7th Cir. 1982); *In re Domestic Air Transportation Antitrust Litig.*, 148 F.R.D. 297, 312 (N.D. Ga. 1993); *GMAC Mortg. Corp.* v. *Stapleton*, 236 Ill. App. 3d 486, 493, 603 N.E.2d 767, 773 (1st Dist. 1992). Relevant factors to this determination are (1) the strength of the case for plaintiff on the merits, balanced against the extent of the settlement offer, (2) the complexity, length and expense of further litigation, (3) the substance and extent of opposition to the settlement by the class members, (4) the reaction of members of the class to the settlement, (5) the opinion of competent counsel, and (6) the progress of the proceedings. *Bennett*, 737 F.2d at 986; *Gautreaux*, 690 F.2d at 631; *Armstrong* v. *Board of School Directors*, 616 F.2d 305, 314 (7th Cir. 1980); *In re Domestic Air Transportation*, 148 F.R.D. at 312. These factors are addressed in sequence below.

A. *The Strength of the Case on the Merits Balanced Against Settlement Offer.*

Based on the presentations of the parties and in the added light of the objections raised, the court is satisfied that plaintiffs' claims had substantial likelihood of success. Plaintiffs note that the Illinois court denied a motion to dismiss the *Carone*

litigation[4] and have cited *Lundquist* v. *Security Pacific Automotive Financial Services Corp.*, 993 F.2d 11 (2d Cir. 1993), in which the court held that the disclosures in the termination provisions of an automobile lease form were not reasonably understandable. In the lease form at issue here, the lessor was permitted to veil the extent to which the termination penalty exceeded the depreciation component (the return to GE Capital of part of its capital investment in the car) and the equivalent of interest (compensation to GE Capital for the fact that the lessee is paying in monthly installments instead of at once). Although there is no precedent that the capitalized cost must be disclosed under the Consumer Leasing Act, a complaint alleging that a dealer's use of a capitalized cost above "sticker price" was a material fact which must be disclosed survived a motion to dismiss in *Maryland National Bank* v. *Goodman*, 91 Ml 157394 (Cir. Ct. Cook Co. Ill.) (App. B to Plaintiffs' submission). Nevertheless, defendant has not conceded liability and maintains that the disclosures in the lease form comply with federal and state law.

It is neither appropriate nor necessary to resolve the merits of the conflicting positions in the case in order to evaluate the fairness of the settlement. *See In re Domestic Air Transportation*, 148 F.R.D. at 312-13; *Armstrong*, 616 F.2d at 313. This is particularly so here because the proposed settlement fund vastly exceeds the amount that could be awarded were the plaintiff class to obtain judgment in their favor. If this class action were to go to judgment in favor of plaintiffs, the damages

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4. The court denied the motion to dismiss plaintiffs' claims that the early termination charges were unreasonable, that the disclosure of default charges in the lease form was confusing, and that the warranty disclosure was inadequate under the Consumer Leasing Act and/or state law. App. G to plaintiff's submission.

available under 15 U.S.C. § 1640(b) for the entire class would be capped at $500,000 (or possibly $1,000,000 if two separate classes with independent claims were found and compensated).[5]

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5. *See* footnote 2 *supra*. Section 1640 reads, in pertinent part, as follows:

> **(a) Individual or class action for damages; amount of award; factors determining amount of award**
>
> Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this part, including any requirement under section 1635 of this title, or part D or E of this subchapter with respect to any person, is liable to such person in an amount equal to the sum of —
>
> (1) any actual damage sustained by such person as a result of the failure;
>
> (2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease under part E of this subchapter, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or
>
> (B) in the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of

(Cont'd)

Thus, the award to individual class members at best would likely be less than $2.00 each. Because this amount is nominal, the parties believe the proposed settlement fairly compensates the plaintiff class. Even the nominal amount may not be recoverable, however, because the law is unsettled whether plaintiffs would be required to establish reliance on the disclosure statement in order to prove damages. *See McCoy* v. *Salem Mortgage Co.*, 74 F.R.D. 8 (E.D. Mich. 1976)(statute and legislative history of federal Truth In Lending Act appear to contemplate actual damages based on reliance on the nondisclosures); *Vickers v. Home Federal Savings and Loan Ass'n*, 62 A.D.2d 1171, 404 N.Y.S.2d 201 (1978)(class certified for liability only because individual reliance was required to establish damages under Truth In Lending Act); *Guilfoy* v. *Suncoast Savings and Loan Ass'n*, No. 94-1500-CIV (S.D. Fla. Oct. 13, 1995)(App. I to Plaintiffs' submission) (plaintiff must show reliance to establish actual damages under Truth In Lending Act). Plaintiffs' counsel represent that their doubts about their ability to establish reliance was a significant factor in their decision to enter into settlement. Whatever the resolution of that issue, this is clearly not a case in which the

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(Cont'd)

> class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor.
>
> (3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 1635 of this title, the costs of the action, together with a reasonable attorney's fee as determined by this court; . . . .

settlement forecloses the potential of significantly greater awards of damages to class members.[6] The court finds that, on balance, the award to class members is fair in light of their potential recovery on the merits.

B. *The Complexity, Length and Expense of Further Litigation.*

The parties have not commented extensively on this point and it has not been addressed by the objectors. The court observes that the case would likely be resolved on summary judgment, a procedure which would be quicker and less expensive than any case that went to trial on disputed facts. Nevertheless, the continuation of the litigation in the face of the limited potential recovery speaks most forcefully in favor of resolution of this case by settlement.

C. *The Substance, Extent, and Reaction of Class Members to the Proposed Settlement.*

The response to the notice indicates that this litigation has not generated significant interest. A relatively small number,

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6. Potentially at least, the class members who terminated their leases were in a position to file individual lawsuits and recover damages authorized at 15 U.S.C. § 1640. If an individual prevailed in such an action, statutory damages alone would be between $100 and $1,000, and thus would certainly exceed the value that such an individual will recover in the proposed settlement. In addition a prevailing plaintiff would be entitled to actual damages that could be proven. Clearly, a class member who wishes to undertake an individual action would have a greater recovery if he or she prevailed, but the cost of litigation would likely deter such an individual from assuming the risk of losing such a lawsuit.

about .2 percent of those receiving notice, have elected to opt out and only an estimated five percent of those receiving notice, about 27,000, have elected to file claims as of December 7, 1995.[7]

The court now turns to the objections to the settlement. Only 15 class members have filed objections. Several have been proffered by persons who have indicated their desire to opt out or who wish their objections to be ruled on before they decide whether to opt out. These objections are considered herein, and as indicated above, class members will be given until January 31, 1996, to make a final opt out decision.

1. *John V., Jr., and Cynthia A. O'Connor* object to the added award to the class representatives entailing release from early termination charges under their leases plus $1,000 if all class members do not receive the same. The provision of additional awards to class representatives, however, has been approved to encourage individuals to take on the responsibility of litigation. *See, e.g., GMAC Mortg.*, 236 Ill. App. 3d at 497, 603 N.E.2d at 776; *Spicer* v. *Chicago Board Options Exchange*, 844 F. Supp. 1226, 1266-67 (N.D. Ill. 1993).

The O'Connors also believe that $50 is essentially a "joke" where the early termination charges were more than $1,000. Similarly, *Thomas A. Toppen* states that he entered into a 60-month lease which he terminated after about 24 months. This resulted in approximately $1,700 termination charges. He believes the nominal settlement is therefore unreasonable. Plaintiffs' counsel respond that the O'Connors and Mr. Toppen

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7. Counsel made this estimate on December 13, cautioning that the figures were estimates and the final figures would likely be greater.

likely believe that the entire early termination charge was wrongful but it is not. Rather, most of the charge is unamortized depreciation, a normal assessment. Plaintiffs' counsel point out that the measure of damages is highly uncertain and could range from the statutory minimum of $100 if the court (in an individual action) found all charges reasonable in spite of nondisclosures, to the determination that none of the charges could be collected. (Plaintiffs' counsel admit, however, that the latter has yet to be endorsed by a court. Plaintiffs' brief at 9.) The court is satisfied, in any event, that for class members who do not opt out of the class, the likely recovery is considerably less than $50. This objection, then, may motivate the objectors to opt out but it does not defeat the fairness of the settlement.

2. *Susan A. Reilly* states that she has learned through hard experience that a lease is inflexible where a lessee's circumstances make continuing the lease impracticable. She would like to terminate her lease but the charges are excessive. She thinks she should receive more than $50 although she cannot file her own law suit. Unless Ms. Reilly files her own law suit, however, her damages if the plaintiff class were to prevail would be less than $50. Her objection does not defeat the fairness of the settlement.

3. *Kathy Reith* states her intention to object to the settlement on the basis that "the true victims of GE Capital's irresponsibility stand to gain nothing from this suit, while the attorneys gain up to $600,000." The issue of attorneys' fees is addressed below. Plaintiffs' counsel point out that Ms. Reith's concerns expressed in her letter related to misrepresentations made by the car dealer, which claims are not released in this settlement. This portion of Ms. Reith's objection does not defeat the fairness of the settlement.

Appendix E

4. *Mark A. Ticer* complains that the asserted claims lack merit and the litigation "does nothing more than generate fees and expenses in the attorney's pocket." He complains that the return on this matter is so little that the litigation is frivolous. In spite of the small monetary return to the class, the court does not find the case frivolous or merely a fee generating tool for class counsel. Through the accumulation of small claims, class actions can effect reform of improper practices and thereby benefit consumers. Because the cost of litigation would far outstrip the recovery of small individual claims, and because the litigation of small claims would be ineffective to effect broad reforms, the class action motivates corporations to respond to legitimate consumer complaints.

5. The objection of *Michael R. Drogin* has been resolved by agreement.

6. *Seymour R. Harris* expresses a concern that the settlement will allow GE Capital to obtain unwarranted general releases for itself and its agent car dealers. Mr. Harris also believes the notice fails sufficiently to inform class members about the provisions of the settlement in that it does not state explicitly that opt outs' claims against auto dealers (as well as GE Capital) would not be affected or that opt outs might become members of another class in another law suit against another dealer (as well as file individual suits). Mr. Harris also believes that the settlement grossly understates the value of the claim.

In response to the court's concern expressed on December 13 about the scope of the release, the parties have submitted the following statement with respect to the release:

> This release . . . is intended to release GECAL from any claims of the type which the named

plaintiffs have made or could have made relating to lease disclosures or lease charges based on the facts alleged in the amended complaint. The parties understand that the specific applicability of this release to any particular claim must be determined by the court in which such claim is made in light of all the facts and circumstances. It is the intent of the parties that variations in legal theories do not give rise to further actions based upon the same facts.

The settlement is also intended to release GECAL's assignors (i.e., the car dealers who initiate the leases) from any claims made against them based upon the language of GECAL's form lease, which it supplies to the dealers. Such a release is necessary in order to provide GECAL itself complete relief from such claims. The settlement expressly excludes from the release, however, claims that might be made against assignor-dealers based upon representations they make to customers that differ from the terms set forth in the lease. Thus a claim that a dealer mis-stated the nature of early termination charges under the lease is not released. A claim that a dealer failed to disclose capitalized cost would be released to the extent it is based solely on the absence of such disclosure in the lease form, but not to the extent that it is based upon other conduct of the dealer creating an alleged duty to disclose the capitalized cost (such as negotiating the purchase of the car at a lower price and then switching the customer to a lease).

The court is satisfied that the release is confined to resolution of issues presented in this lawsuit and does not amount to a general release. A narrower release would not be of interest to the defendants, who wish to dispose of this litigation.

Mr. Harris' objection concerning notice does not concern the court. The fundamental message of the opt out notice is that a class member can be excluded from all the consequences of the litigation. This embraces the implicit assumptions about which Mr. Harris is concerned.

The objection that the settlement undervalues the claims rests on (a) an assumption that other violations of the Consumer Leasing Act arising from the lease form which might have been established would each give rise to an award of up to $500,000 against both GE Capital and the offending dealer; and (b) that the limitations of § 1640(d) and (g) do not apply to class actions. Although it is possible to read the provisions as Mr. Harris does, the court is satisfied that plaintiffs have interpreted it properly — that the total award to the entire class is capped at $500,000 (or at most $1 million). To read the statute otherwise would render the damages cap void, a result which Congress would likely have made explicit if that had been its intention.

7. *Steven Lawson* objects on the basis that the settlement is worthless to the class. He believes the $100 new lease certificate is worthless because GE Capital can simply raise its price to absorb the $100 loss. This is, of course, possible but fails to take into account market competition which would auger against it. He derides the notion that a class member would have to enter into a new lease with GE Capital in order to use the $100 certificate and suggests it only provides additional business to the malefactor in the situation. This objection is

not persuasive where, as here, the recipients of the certificates are class members who did not terminate their leases; thus they were neither affected by the nondisclosures or subjected to the allegedly excessive termination charges. Although it is true that in an individual case a plaintiff could recover up to $1,000 without actual damages, the appropriate comparison here is the amount the person would have recovered in a class action that went to judgment. Here, that amount would have been nominal. The unfairness, if any, is not in the settlement but in the damages cap imposed by Congress.[8]

Mr. Lawson, like several other objectors, also suggests that the $50 early termination certificate is nearly worthless to early terminators because they are not to be released from the early termination charges. He also complains that the notice did not provide information on what early termination charges customarily amount to or how they are determined so as to assist a provisional class member in deciding whether to terminate early (or to opt out). GECAL maintains that the charges under the leases were not inflated. Class counsel respond that Mr. Lawson does not recognize that early termination charges are an accepted part of leasing or that the bulk of the money allocated for early termination certificates will go to persons who have already terminated. Those individuals will receive either cash or a reduction in the amount owed to GE Capital. A person who is not sure whether to

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8. Mr. Lawson calculates that 90% of the class will receive nothing. This estimate assumes that 50,000 early termination certificates will be issued, and that $500,000 will go to the remainder of the class in the form of new lease certificates of $100, or 5,000 beneficiaries. He apparently overlooks that the cap on the new lease certificates under the Settlement Agreement is $10 million rather than $500,000. Settlement Agreement at 4, ¶ 2(c).

terminate should normally request a new lease certificate which would have a higher value. The court observes also that it is unlikely that the small amount involved would influence a decision to terminate. Rather, those confronted with circumstances favoring termination will simply have available this small deduction from the inevitable charges.

Mr. Lawson is also disturbed that the settlement does not entail reformation of the lease form. Counsel for both parties represent, however, that the American Financial Services Association, in response to litigation such as this, has adopted a voluntary standard of conduct calling for disclosure of "capitalized cost" in all leases. They also represent that the Federal Reserve Board has published for comment new regulations which govern the disclosures required for early termination charges. Obviously, GE Capital expects to comply with those regulations and is unwilling to enter into any agreement that would impose different obligations. The court believes this is a reasonable position.

Mr. Lawson also makes a variety of procedural objections concerning the absence of an evidentiary hearing on the motion for preliminary approval of the settlement, which included provisional certification of the class, approval of class counsel and the terms of settlement. The fact that the case was in a settlement posture before defendant was required to answer no doubt contributed to the comprehensiveness of that event. Under the circumstances, the court believes the order was appropriate and sees no prejudice to class members because they had been given sufficient time to opt out and to raise objections. *See Mars Steel Corp.* v. *Continental Illinois National Bank & Trust Co.*, 834 F.2d 677, 683-84 (7th Cir. 1987) (district court's certification of the class along with preliminary approval of

settlement and its refusal to hold evidentiary hearing before giving preliminary approval to settlement were within its discretion).

8. *Pamela Cade* points out that class members such as herself who will neither make an early termination of a lease or make future lease payments to Capital will not benefit at all from the settlement. *Joel Judd*, *Elliot Sullivan* and *Randy Scheer* echo this objection, stating that after one lease with GE Capital they do not intend to enter into another one; thus, the settlement makes them no better off than if defendants were to prevail.[9] Ms. Cade suggests that the settlement be modified either to create a minimum cash value for the certificates or to make them transferable in order to increase the number of class members who will take advantage of the settlement.

Several other objectors are also suspicious of the certificate form of payment, because it tends to reward GE Capital with more business and to give the class members very little. Class counsel respond that in fact the early termination certificates are money in the pocket of those members of the class who have any claim to actual damages. They point out that the other class members have no out-of-pocket losses, so this is unlike situations where coupons have been used (or disapproved) to compensate a class whose members have in fact suffered actual damages. GE Capital adds that because the claims of non-terminating class members have only infinitesimal value, the cash value would at best be less than $1.00, an amount so low that it would not justify the transaction costs. Similarly, making

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9. Randy Scheer also objects to the class representatives receiving more than other class members and *Herman Fagan* believes the nominal relief is simply inadequate. All of these objections are similar to those treated above and will not be discussed.

the certificates transferable would significantly affect the value that could be assigned to them. Capital is unwilling to settle on this basis.

The court believes that although persons such as Cade, Judd, Silverman and Scheer will obtain no monetary recovery, this is not unjust in view of their lack of damages. They do enjoy the benefit of improved disclosures which have resulted or will soon result from the litigation.

In light of the nominal potential recovery, the court accepts the parties' agreement that payment be made in certificates and that those certificates be non-transferable. Transferability at the same value would vastly increase the cost of the settlement and reducing the value to make transferability practicable would result in too little gain to individuals to make it worthwhile.

9. *Thomas J. Little*, similarly to Ms. Cade, states that he terminated his lease with GE Capital and, after unsatisfactory negotiations regarding the termination charges, ultimately purchased the car. He is unhappy about his experience and would not enter into a new lease under any circumstances; thus, he feels the settlement is worthless to him. Class counsel state that Dr. Little would appear to be entitled to $50 and, if so, he would receive a check in that amount.

The court is concerned that persons such as Dr. Little who have paid their early termination charges be fully informed that they can file a claim and receive payment in lieu of a new lease certificate. This may entail identifying those individuals and sending them notice to that effect. ***Counsel are directed to report to the court by January 4, 1996 either that this has been done or to provide an alternative proposal addressing this concern.***

Appendix E

10. Most of the objectors take umbrage with class counsel's request for attorney's fees. The approach favored in the Seventh Circuit is to compute attorney's fees as a percentage of the benefit conferred on the class. *Harman* v. *Lyphomed, Inc.*, 945 F.2d 969, 975 (7th Cir. 1991); *In re Continental Illinois Sec. Litigation*, 962 F.2d 566 (7th Cir. 1992), *later proceeding*, 985 F.2d 867 (7th Cir. 1993); *see also In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Lit.*, 56 F.3d 295, 307 (1st Cir. 1995); *Swedish Hosp. Corp.* v. *Shalala*, 1 F.3d 1261, 1271 (D.C. Cir. 1993); *Camden I Condominium Assn* v. *Dunkle*, 946 F.2d 768, 773-74 (11th Cir. 1991); *Court Awarded Attorney Fees, Report of the Third Circuit Task Force*, 108 F.R.D. 237 (1985); *Brown* v. *Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *Paul, Johnson, Alston & Hunt* v. *Graulty*, 886 F.2d 268, 272 (9th Cir. 1989); *Bebchick* v. *Washington Metropolitan Area Transit Comm'n*, 805 F.2d 396, 406-7 (D.C. Cir. 1986).

This permits the attorneys to benefit in relation to the value conferred on their clients, a time-honored practice in the tort field. Fees in the range of 25 percent of the recovery have been approved in other common fund cases. *See Paul, Johnson, Alston & Hunt*, 886 F.2d at 272-73 ("Ordinarily, . . . fee awards range from 20 percent to 30 percent of the fund created."); *Bebchick*, 805 F.2d at 407 (25% of the recovery was a reasonable percentage fee for otherwise uncompensated attorneys); *Camden I*, 946 F.2d at 775 (courts are beginning to view the median of this 20% to 30% range as a benchmark).

Class counsel are requesting $600,000 which GE Capital will pay in addition to the money allocated for certificates. Although the notice stated that counsel would also request seven percent of the early termination coupons actually used and 10

percent of the new lease certificates actually used, class counsel have agreed to waive their request to be paid fees from the certificates.[10]

Class counsel represented on December 13 that as of December 7, claims had been approved for approximately 14,500 new lease certificates and 9,900 early termination certificates. Assuming that all of these certificates are redeemed, the outlay would be $1.945 million. This number is expected to increase through the approval of additional claims, although counsel concede that the total of 27,000 claims received as of December 7 represent the bulk of those expected. If one assumes an additional 20 percent to be added to the $1.945 million for additional claims allowed, and approximately $18,000 ($1,000 plus release of all charges which the court estimates at $2,000 each) for the named plaintiffs, the total expenditure by GE Capital would be in the range of $2.35 million. Based on this estimate, a fee award of $600,000 would be but slightly more than 20 percent of the total recovery likely to be paid under the settlement.[11]

The feeling that class counsel are getting rich while accomplishing little for class members is acknowledged. Nevertheless, it must also be recognized that the intended

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10. Counsel had estimated that GE Capital would expend $2.5 million in early termination coupons alone and that the $600,000 fee request would be approximately 20 percent of that total recovery (including the fees). These numbers, as counsel appears to concede, are high in that the rate of claims has been lower than expected. This has undoubtedly persuaded counsel to reduce its request for fees to $600,000.

11. If 20 percent is allocated to attorney fees, the total recovery would be $2,937,500, of which 20 percent would be $587,500.

benefit of this type of litigation is not to be found in individual class member's awards. The availability of the class action device together with the legislation imposing a damages cap strongly point to a public policy which seeks to induce compliance and deter violations by granting incentives to counsel rather than to individual consumers. Without significant counsel fees to encourage the pursuit of these claims, the public policy to induce compliance with the law would be disserved. In light of all these factors, the court concludes that $600,000 is a reasonable fee award.[12]

11. Finally, the objectors raise a variety of other issues which are either not borne out by the record or are, in the court's view, not significant enough to discuss in this decision. The court has, however, read all the objections and finds that they are not material to the determination that this settlement is fair, reasonable and adequate for the class. Because several of the objectors expressed need for resolution of their objections before they made a decision whether to opt out, ***plaintiffs' counsel are directed by December 31, 1995 to mail a copy of this decision to all objectors.***[13]

D. *The Opinion of Competent Counsel and the Progress of the Proceedings.*

The court finds that counsel on both sides of this case are very competent and have represented their clients with the

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12. The objection that too many attorneys are involved carries no weight where the award is fixed based on a percentage of recovery. The size of the shares for individual attorneys will presumably be inversely proportional to the number of attorneys involved.

13. This includes Bruce I. Griffey, who states that he received the notice on November 13, 1995.

allegiance required of them by the code of conduct of their profession. Counsel have brought the case to resolution efficiently by joining the state and federal litigation into one settlement. There is no indication that counsel have pursued inappropriate theories or engaged in wasteful or needless litigation, nor on the other hand that they have settled the case for less than the potential recovery without reasonable basis. Indeed, the settlement likely has gained more than the potential recovery could have.

CONCLUSION

For these reasons, the court grants the motion for final approval of the proposed settlement as set forth in the Settlement Agreement, and approves the award of attorney fees in the amount of $600,000. Draft order to enter. This case will be called for status on January 4, 1996 at 10:00, concerning the remaining directions to counsel identified above, at which time (assuming satisfactory resolution) final judgment will be entered.

ENTER:

s/ Joan Humphrey Lefkow
JOAN HUMPHREY LEFKOW
United States Magistrate Judge

Dated: December 19, 1995

APPENDIX F — FINAL JUDGMENT AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION DATED JANUARY 4, 1996

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 94 C 7410
Hon. James H. Alesia
Magistrate Lefkow

STACEY WILLIAMS, et. al.,

Plaintiffs,

v.

GENERAL ELECTRIC CAPITAL
AUTO LEASE, INC., et. al.,

Defendants.

FINAL JUDGMENT AND ORDER

This matter coming on to be heard as to whether the proposed settlement of this action should be finally approved, the parties having presented their Settlement Agreement to the Court and the Court having held a hearing on the fairness of the proposed settlement of this action, at which objectors to the settlement could appear, and the Court being fully advised in the premises, the Court finds that:

Appendix F

1. Notice of the proposed settlement has been timely mailed to all persons meeting the class definition in accordance with the terms of the Court's order of July 26, 1995, which provisionally certified a settlement class, preliminarily approved the proposed settlement and authorized such notice, and such notice satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

2. The issues as to liability and remedies, if any, in this action, are issues as to which there are substantial grounds for difference of opinion, and the proposed settlement of this action constitutes a resolution of those issues that is fair and reasonable to the members of the class certified herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:

1. The Settlement Agreement submitted herein is approved as fair, reasonable, and adequate pursuant to Rule 23 of the Federal Rules of Civil Procedure, and the parties are directed to consummate such agreement in accordance with its terms.

2. The settlement class provisionally certified herein is now finally certified. The Court finds that (a) such Class is so numerous that joinder of all members is impracticable, (b) there are questions of both law and fact common to the claims of all members of the Class under the federal Truth In Leasing Act, 15 U.S.C. Sec. 1667 et seq., (c) such common questions of law and fact with respect to the issue of liability predominate over questions affecting only individual members of the Class and a class action is superior to other available methods for the fair and efficient adjudication of this issue, (d) such claims of the proposed class representatives with respect to this issue are

typical of the claims of all members of the Class, and (e) the proposed representatives will fairly and adequately protect the interests of the Class.

3. This action is hereby dismissed, with prejudice and without costs, and all claims asserted in this action, and all claims which might have been asserted in this action by plaintiffs and the Class against General Electric Capital Auto Lease, Inc. ("GECAL"), it successors and assigns, and its assignors, agents, affiliates, employees, directors and officers, both past and present, arising out of disclosures made on or in connection with vehicle leases assigned to GECAL, out of the reasonableness or validity of the charges and other terms contained in such leases, and out of the collection or attempted collection of charges imposed under such lease forms, are hereby dismissed with prejudice and without costs, except that the following claims are not dismissed, settled or barred hereby: (i) claims against assignors of GECAL based upon representations other than the written terms of the lease, (ii) claims based upon vehicle defects, property damage, personal injury or death, repossession or recovery of the leased vehicle, or collection practices other than collection or attempted collection of amounts specified in the lease, or (iii) claims concerning application of security deposits or entitlement to profits or other economic benefits realized in connection with security deposits (whether or not characterized as such in the lease) and lease disclosures regarding such entitlement. This order does not affect other rights and obligations of Class members and GECAL under their leases.

4. Class members who did not opt out of the class are hereby permanently barred, restrained, and enjoined from commencing, prosecuting, or asserting by way of counterclaim

or defense against GECAL any of the claims dismissed, settled or barred pursuant to this order.

5. The payment of fees and expenses to counsel for plaintiff and the class in the amount of $600,000 is hereby approved as fair and reasonable and in accordance with the terms of the Settlement Agreement.

6. No costs shall be taxed against any party.

7. Consummation of the settlement shall proceed as described in the Settlement Agreement and the court hereby retains jurisdiction of this matter for the sole purpose of resolving any disputes which may arise in the implementation of the Settlement Agreement. Final judgment shall be entered as provided herein.

ENTER:

Date: Jan. 4, 1996

s/ Joan H. Lefkow
THE HONORABLE JOAN H. LEFKOW

APPENDIX G — ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING PETITION FOR REHEARING DATED AND DECIDED NOVEMBER 27, 1998

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois 60604

Decided November 27, 1998

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 94 C 7410

Joan H. Lefkow, *Magistrate Judge.*

STACEY A. WILLIAMS, *et al.*,

Plaintiffs-Appellants,

No. 97-1321

v.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC., *et al.*,

Defendants-Appellees.

Appendix G

ORDER

On consideration of the petition for rehearing with suggestion for rehearing *en banc* filed by counsel for Plaintiffs-Appellants Dudley E. Williams, Jr., Suzanne E. Harper, James S. Harper, John A. Ward, Jr. and Lisa G. Ward on October 16, 1998, no judge* in regular active service has requested a vote on the suggestion for rehearing *en banc*, and all members of the original panel have voted to **DENY** the petition for rehearing. Accordingly,

IT IS ORDERED that the petition for rehearing be, and the same is hereby, **DENIED**.

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* Circuit Judges Walter J. Cummings and Ilana Diamond Rovner not did not participate in consideration of the petition for rehearing *en banc*.

APPENDIX H — COMPLAINT DATED AND DOCKETED DECEMBER 17, 1994

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

STACEY A. WILLIAMS, on behalf of herself and all others similarly situated,

Plaintiff,

v.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC. and JACOBS TWIN HONDA, INC.,

Defendants.

COMPLAINT

INTRODUCTION

1. This action challenges the disclosure practices of General Electric Capital Auto Lease, Inc. ("GECAL"), and its dealer-agents, such as Jacobs Twin Honda, Inc. ("Twin") in connection with automobile leases.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 15 U.S.C. §§1640 and 1667d and 28 U.S.C. §§1331 and 1337. Venue in this District is proper because the defendants are located here and the events at issue took place here.

Appendix H

PARTIES

3. Plaintiff Stacey A. Williams is an individual who resides at 2455 W. Jackson, Chicago, IL 60612.

4. Defendant GECAL is a Delaware corporation with its principal place of business at 1300 S. Grove Avenue, Barrington, Illinois 60010.

5. The regular business activities of GECAL include leasing and offering to lease motor vehicles. Many of the leases are made with natural persons who lease vehicles for personal, family or household purposes. The term of most or all of these vehicle leases exceeds four months. In many cases, the total contractual obligation under the lease is less than $25,000.

6. Twin is an Illinois corporation with its principal place of business at 6720 W. Grand Avenue, Chicago, Illinois 60635.

7. Twin operates a car dealership. The regular business activities of Twin include leasing and offering to lease motor vehicles. Many of the leases are made with natural persons who lease vehicles for personal, family or household purposes. The term of most or all of these vehicle leases exceeds four months. In many cases, the total contractual obligation under the lease is less than $25,000.

FACTS

8. On December 23, 1993, Ms. Williams entered into a consumer automobile lease with GECAL covering a 1994 Honda. In connection with this transaction, GECAL issued a combination lease contract/ Consumer Leasing Act disclosure

statement. *Exhibit A*, attached, is a true and accurate copy of this document.

9. The lease included a printed addendum on another GECAL form, that modified the computation of early termination liability under certain circumstances. *Exhibit B*, attached, is a true and accurate copy of the addendum.

10. The scheduled term of the lease was 5 years. It is still outstanding.

11. The vehicle was leased for purposes of general personal transportation, as indicated by a box on the lease form.

12. The total of payments under the lease was $17,040.

13. As set forth in *Exhibit A*, it was agreed between the parties that payments were to be made to GECAL and that the lease disclosures were made on behalf of GECAL.

14. The manufacturer's suggested resale price of the car was $14,050.

15. The economic equivalent of the price in the case of a lease is known as the "capitalized cost." All other numbers on the lease are derived using the "capitalized cost."

16. The "capitalized cost" used by Twin in the case of plaintiff's lease was, on information and belief, $20,033.90. This number may be derived, by those familiar with lease accounting, by adding the depreciation components of the monthly payments, in this case $10,856.40, any down payment ("capitalized cost reduction"), in this case $_,000, and the

estimated value of the car at the end of the lease, in this case $7,177.50.

17. The printed form of lease used by Twin and GECAL does not provide for disclosure to the consumer of the "capitalized cost."

18. The average consumer does not know how to calculate or estimate the "capitalized cost" from the lease.

19. Plaintiff did not realize at the time she leased the car that the "capitalized cost" on which all of the lease figures were based exceeded the manufacturer's suggested resale price of the car.

20. Plaintiff had originally visited Twin for the purpose of buying a car, and had negotiated to purchase the same vehicle at a price substantially less than $20,033.90. However, Twin convinced plaintiff to lease the vehicle instead of purchasing it. Instead of using the negotiated price, or even the manufacturer's suggested resale price, as the basis for the lease calculations, Twin used $20,033.90.

CONSUMER LEASING ACT

21. The federal Consumer Leasing Act, 15 U.S.C. §1667 et seq. ("Consumer Leasing Act"), and implementing Federal Reserve Board regulations, 12 C.F.R. part 213 ("Regulation M"), and Staff Commentary, 12 C.F.R. part 213 Supp. I ("Commentary"), apply to any "consumer lease." A "consumer lease" is defined as a "contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual

obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease . . . ." Leases for "agricultural, business, or commercial purposes" are excluded. 15 U.S.C. §1667(1).

22. The Consumer Leasing Act and Regulation M also require a "lessor" to provide a "lessee" with extensive disclosures prior to the consummation of a "lease," analogous to those required in the case of credit transactions by the Truth in Lending Act. 15 U.S.C. §1667a. The disclosures must be made "clearly, conspicuously, [and] in meaningful sequence" and either on a separate written statement or in the contract, "above the place for the lessee's signature." 12 C.F.R. §213.4(a). The Staff Commentary requires that all lease disclosures be "reasonably understandable."

23. The disclosures must be "made together on a single page (which may include both sides) and above the place for the lessee's signature." (Commentary, §4(a)(2)) No required disclosures may be in fine print on the back or on a separate piece of paper.

24. The specific information that must be disclosed includes:

a. "The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments." 12 C.F.R. §213.4(g)(10).

b. "A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of

the lease term and the amount or method of determining the amount of any penalty or other charge for early termination." 12 C.F.R. §213.4(g)(12).

c. "A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property." 12 C.F.R. §213.4(g)(7).

25. The Consumer Act provides that any lessor who violates any requirement imposed by 15 U.S.C. §§1667a, 1667b, and the implementing regulations is liable as provided in the Truth in Lending Act, 15 U.S.C. §1640.

APPLICABILITY OF CONSUMER LEASING ACT TO PLAINTIFF'S TRANSACTION

26. The Consumer Leasing Act and Regulation M were applicable to plaintiff's leases because:

a. GECAL and Twin were each a "lessor," in that each was regularly engaged in the business of leasing and offering to lease vehicles to natural persons for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family or household purposes.

b. Plaintiff is a natural person.

c. Plaintiff leased the vehicle for personal, family and household purposes, as indicated by checking the "personal" box on the lease form.

d. The agreement represented by *Exhibit A* and *Exhibit B* is a "contract in the form of a lease . . . for the use of personal property by a natural person."

e. The term of the lease exceeded four months.

f. The total contractual obligation did not exceed $25,000.

DISCLOSURE VIOLATIONS

27. The GECAL lease form fails to disclose default and early termination charges in an understandable manner.

28. Default liability is imposed by item 1(O). The second Item 1(0)(iv), setting forth part of the charges upon default, requires reference to Item 1(K), which begins with the confusing language "If I am not in default . . ."

29. Item 1(K) states:

> If I am not in default, I have the right at any time upon thirty (30) days prior written notice to terminate this Lease Agreement by payment of the sum of the following amounts:
>
> (i) a disposition fee of $250;
>
> (ii) any monthly lease payments currently due and unpaid or other amounts or charges arising from my failure to keep my promises under this Lease Agreement, including without limitation the amount

you must spend to put the Vehicle in good operating order and appearance as required by Item 1(F);

(iii) where the Balance Subject to Lease Charge, as defined in Item 1(D), less depreciation taken to date, as described in Item 1(D), is greater than Vehicle's Realized Value, as defined below, the difference by which is greater;

(iv) an early termination charge equal to the number of Total Base Monthly Payments, Item 2(C), shown in the chart below, which is based upon the percentage of months in the Lease Term which have expired (this percentage is calculated by dividing the number of months expired in the Lease Term by the total number of months in the Lease Term).

% of Months in Lease Term Expired	Number of Total Base Monthly Payments Due
0-25%	6
26-50%	5
51-75%	4
76-99%	Lesser of 3 or the number of remaining months

(v) any official fees and taxes imposed in connection with termination of this Lease Agreement.

My early termination liability, if I do not purchase the Vehicle, will be affected by the Realized Value of the Vehicle. The Realized Value may be determined in one of the following ways:

(i) by a written agreement between you and me if it is signed 10 days prior to the date of early termination; (ii) by a professional appraisal obtained at my expense of the wholesale value of the Vehicle 10 days prior to the date of early termination if you and I can each agree to my selection of an independent third party qualified to make the appraisal; (iii) if the Realized Value is not determined by the date of early termination you will determine Realized Value in a commercially reasonable manner in accordance with accepted practices in the automobile industry for determining the value of used vehicles; or (iv) if the Vehicle has been stolen or destroyed the Realized Value will be the amount of any proceeds of the insurance coverage maintained by me for the Vehicle.

I understand that the Realized Value amount will be reduced by the expenses of sale and any official or other fees and taxes incurred upon Vehicle disposition.

30. A critical element required to apply Item 1(K) is the "Adjusted Lease Balance," described as follows in Item 1(D):

DEFINITION OF ADJUSTED LEASE BALANCE During the Lease Term you will earn total lease charges equal to the product of the number of months in the Lease Term and the Total Base Monthly Payment minus Average Monthly Depreciation and applicable sales/ use taxes, Item 2(C). Although the amount of each Total Base Monthly Payment will not charge (assuming current sales/ use tax rates do not change), the depreciation and lease charge

portions will differ with each monthly payment. This is why the amount shown in Item 2(C) is labeled "average" monthly depreciation. The lease charges will be earned by you on a constant yield basis in relation to the Adjusted Lease Balance as it declines during the Lease Term. At any given time, the Adjusted Lease Balance is the difference between the Balance Subject to Lease Charge and the sum of (a) all depreciation amounts applied to the Balance Subject to Lease Charge to date and (b) one Total Base Monthly Payment, less applicable sales/use taxes, Item 2(c). The Balance Subject to Lease Charge is equal to the sum of (a) the Estimated End of Term Wholesale Value, Item 2(B), and (b) the product of the Average Monthly Depreciation in Item 2(C) and the number of months in the Lease Term, Item 2(A). These calculations follow the rules for journal entries for lessors as to "Direct Financing Leases" set forth in the Financial Accounting Standards Board Rule 13. The monthly lease charge calculations are based on the assumptions that the initial monthly lease payment is due when I sign this Lease Agreement, the remaining monthly lease payments are due on the same day of each succeeding month, you will receive monthly lease payments on their exact due dates, and the Adjusted Lease Balance in existence as of the beginning of a month would be outstanding for that entire month.

31. This language is totally incomprehensible to a layperson because of the use of technical terms and the repeated cross-references.

32. The liability is then modified, in the case of an insurance total loss prior to the scheduled termination of the

lease, by *Exhibit B*. *Exhibit B* is a separate piece of paper. By putting part of the early termination formula on a separate piece of paper, defendants violated the Consumer Leasing Act.

33. The GECAL lease form also fails to identify express warranties and guarantees made by the manufacturer. 12 C.F.R. §213.4(g)(7).

34. Item 1(G) of the GECAL lease form provides:

> **VEHICLE WARRANTIES**
> I understand that if the Vehicle is subject to a manufacturer's new car warranty, you assign to me all the rights and remedies you have under that warranty to the extent they are assignable. I ACKNOWLEDGE THAT I AM LEASING THE VEHICLE FROM YOU "AS IS" AND THAT YOU DO NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE VEHICLE OR ANY OF ITS COMPONENTS, AND YOU SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE VEHICLE OR ANY OF ITS COMPONENTS FOR ANY PARTICULAR PURPOSE.

35. The statement in the GECAL lease form that "if" there is a warranty such rights and remedies GECAL has as are assignable are assigned fails to "identify" any warranties, in

violation of 12 C.F.R. §213.4(g)(7). It also requires the lessee to make a determination of what warranty rights GECAL (a commercial purchaser of the vehicle for use in its business of leasing) has, and the extent to which its warranty rights are assignable.

36. The GECAL lease form also purports to require that if the lessee desires that the realized value of the vehicle be determined by appraisal, that the lessee must obtain it 10 days prior to the date of the early termination. Item 1(K). This makes the appraisal remedy unavailable in cases of early termination by default, because the default clause (Item 1(O)) provides that in the event of default GECAL will early terminate the lease by unilateral action without giving notice to the lessee and then repossess the vehicle. Regulation M, 12 C.F.R. §213.4(g)(14), gives the lessee the right to an appraisal in all cases of early termination, and requires that the lessee be informed of that right.

UNFAIR AND DECEPTIVE PRACTICES

37. It is unfair and deceptive to write a lease using a "capitalized cost" in excess of the manufacturer's suggested resale price of the vehicle without specifically disclosure of the fact to the lessee.

38. Consumers do not ordinarily pay more than the manufacturer's suggested resale price when purchasing a vehicle.

39. No consumer who understood that the capitalized cost was the economic equivalent to the purchase price would sign a lease in which the capitalized cost exceeded the manufacturer's suggested resale price.

Appendix H

40. The only way in which GECAL and its dealers, such as Twin, can induce consumers to sign leases in which the capitalized cost exceeds the manufacturer's suggested resale price is by deceptive misrepresentation, such as by negotiating a purchase price and then "selling" the consumer on a lease using a higher capitalized cost, or nondisclosure of the capitalized cost, which is broken up into several components and not disclosed as a single number anywhere on the lease form.

41. GECAL competes for the business of car dealers, such as Twin, by offering to advance them amounts pursuant to auto leases that exceed amounts which other leasing companies are willing to advance.

42. It has long been GECAL's policy to advance in excess of 100% of the manufacturer's suggested resale price to the dealer.

43. GECAL thereby encourages dealers to use a "capitalized cost" in excess of the manufacturer's suggested resale price and to use improper sales tactics to induce consumers to sign such leases.

44. The use of a "capitalized cost" in excess of the manufacturer's suggested resale price has long been known to GECAL as a deceptive practice. A 1989 report of the New York Attorney General found that this was a significant problem:

> The initial value of the car being leased (the cost of acquisition to the lessor) is traditionally not disclosed to lessees. Many lessors artificially inflate this value so that they can increase the amount of depreciation, the major component of the lessee's

monthly payments. The higher the initial value, the greater the depreciation and the greater the monthly payment and, consequently, at early termination, the lessee will be responsible for a greater amount of depreciation.

For example, some lessors reportedly assign an amount equal to 110% of the "Manufacturer's Suggested Retail Price" (MSRP) for the initial value of the cars leased. Even using MSRP for the initial value would constitute an exaggeration, in most instances, because cars are usually purchased for substantially less than the MSRP. (Attorney General of New York, *Early Termination Clauses in Long Term Automobile Leases: Consumers are Paying Too Much* (June 1989), pp. 7-8)

45. GECAL, knowing full well of the deceptive nature of using a capitalized cost in excess of the manufacturer's suggested resale price, intentionally continued to encourage the practice.

CLASS ALLEGATIONS

46. This action is brought on behalf of two classes, designated A and B.

47. Class A consists of all persons who satisfy the following criteria:

a. They leased a car.

b. The lease was written on the same GECAL form as *Exhibit A*.

c. They also signed the printed form of document represented by *Exhibit B*.

d. The lease was assigned to GECAL.

e. The total of payments under the lease was less than $25,000.

f. The lease is marked as being for personal, family or household purposes.

g. The term of the lease exceeds four months.

48. Class A includes all persons whose leases were outstanding after a date one year prior to the filing of this action.

49. Class B consists of all persons who satisfy the following criteria:

a. They leased a car.

b. The lease was written on the same GECAL form as *Exhibit A*.

c. The lease was assigned to GECAL.

d. The lease is marked as being for personal, family or household purposes.

e. The term of the lease exceeds four months.

f. The capitalized cost exceeded the manufacturer's suggested resale price.

50. Class B includes all persons whose leases were outstanding after a date three years prior to the filing of this action.

COUNT I — CONSUMER LEASING ACT

51. Plaintiff incorporates paragraphs

52. This claim is brought on behalf of Class A.

53. GECAL violated the Consumer Leasing Act with respect to all members of Class A.

54. Twin violated the Consumer Leasing Act with respect to all members of Class A that leased through Twin.

WHEREFORE, the Court should enter judgment in favor of plaintiff and Class A and against GECAL and Twin granting the following relief:

a. The amounts specified in 15 U.S.C. §1640.

b. Attorney's fees, litigation expenses and costs.

d. Such other or further relief as the Court deems appropriate.

COUNT II — CONSUMER FRAUD ACT

55. Plaintiff incorporates paragraphs

56. This claim is brought on behalf of Class B.

Appendix H

57. GECAL violated section 2 of the Consumer Fraud Act with respect to all members of Class B.

58. Twin violated section 2 of the Consumer Fraud Act with respect to all members of Class B that leased through Twin.

WHEREFORE, the Court should enter judgment in favor of plaintiff and Class B and against GECAL and Twin granting the following relief:

a. Actual and punitive damages.

b. Attorney's fees, litigation expenses and costs.

c. Such other or further relief as the Court deems appropriate.

s/ Daniel A. Edelman
Daniel A. Edelman

Daniel A. Edelman
Cathleen M. Combs
O. Randolph Bragg
Tara L. Goodwin
J. Eric Vander Arend
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(312) 419-0379 (FAX)

Appendix H

Lawrence Walner

Lawrence Walner
LAWRENCE WALNER & ASSOCIATES, LTD.
150 N. Wacker Drive, Suite 1870
Chicago, Illinois 60606
(312) 201-1616
(312) 201-1538 (FAX)

JURY DEMAND

Plaintiff demands trial by jury.

s/ Daniel A. Edelman
Daniel A. Edelman

APPENDIX I — AMENDED COMPLAINT DATED AND FILED JULY 24, 1995

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

94 C 7410
Judge Alesia
Magistrate Judge Lefkow

STACEY A. WILLIAMS, SALVATORE CARONE, JAMES GEORGIAS, STACI BEASLEY, PETER R. RICHARD, and GARY L. BLANK, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC., SUN HYUNDAI, INC. f/k/a KAILER YOUNGQUIST OLDSMOBILE, INC., and JACOBS TWIN HONDA, INC.,

Defendants.

AMENDED COMPLAINT

INTRODUCTION

1. This action challenges the disclosure practices of General Electric Capital Auto Lease, Inc. ("GECAL"), and its dealer-agents, such as Jacobs Twin Honda, Inc. ("Twin") and Sun Hyundai, Inc. f/k/a Kailer Youngquist Oldsmobile, Inc. ("KYO"), in connection with automobile leases.

Appendix I

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction under 15 U.S.C. §§1640 and 1667d and 28 U.S.C. §§1331 and 1337. Venue in this District is proper because the defendants are located here and the events at issue took place here.

PARTIES

3. Plaintiffs Stacey A. Williams ("Ms. Williams"), Salvatore Carone ("Mr. Carone"), James Georgias ("Mr. Georgias"), Gary L. Blank ("Mr. Blank"), Staci Beasley ("Ms. Beasley"), and Peter M. Richard ("Mr. Richard") are individuals residing in Illinois.

4. Defendant GECAL is a Delaware corporation with its principal place of business at 1300 S. Grove Avenue, Barrington, Illinois 60010.

5. The regular business activities of GECAL include leasing and offering to lease motor vehicles. Many of the leases are made with natural persons who lease vehicles for personal, family or household purposes. The term of most or all of these vehicle leases exceeds four months. In many cases, the total contractual obligation under the lease is less than $25,000.

6. Twin is an Illinois corporation with its principal place of business at 6720 W. Grand Avenue, Chicago, Illinois 60635.

7. Twin operates a car dealership. The regular business activities of Twin include leasing and offering to lease motor vehicles. Many of the leases are made with natural persons who lease vehicles for personal, family or household purposes. The

term of most or all of these vehicle leases exceeds four months. In many cases, the total contractual obligation under the lease is less than $25,000.

8. KYO is a corporation with its principal place of business at 4925 N. Broadway, Chicago, Illinois.

9. KYO operates a car dealership. The regular business activities of KYO include leasing and offering to lease motor vehicles. Many of the leases are made with natural persons who lease vehicles for personal, family or household purposes. The term of most or all of these vehicle leases exceeds four months. In many cases, the total contractual obligation under the lease is less than $25,000.

MS. WILLIAMS' TRANSACTION WITH GECAL

10. On December 23, 1993, Ms. Williams entered into a consumer automobile lease with GECAL covering a 1994 Honda. In connection with this transaction, GECAL issued a combination lease contract/ Consumer Leasing Act disclosure statement. *Exhibit A*, attached, is a true and accurate copy of this document.

11. The lease included a printed addendum on another GECAL form, that modified the computation of early termination liability under certain circumstances. *Exhibit B*, attached, is a true and accurate copy of the addendum.

12. The scheduled term of the lease was 5 years. It is still outstanding.

13. The vehicle was leased for purposes of general personal transportation, as indicated by a box on the lease form.

14. The total of payments under the lease was $17,040.

15. As set forth in *Exhibit A*, it was agreed between the parties that payments were to be made to GECAL and that the lease disclosures were made on behalf of GECAL.

16. The manufacturer's suggested resale price of the car was $14,050.

17. The economic equivalent of the price in the case of a lease is known as the "capitalized cost." All other numbers on the lease are derived using the "capitalized cost."

18. The "capitalized cost" used by Twin in the case of plaintiff's lease was, on information and belief, $20,033.90. This number may be derived, by those familiar with lease accounting, by adding the depreciation components of the monthly payments, in this case $10,856.40, any down payment ("capitalized cost reduction"), in this case $2,000, and the estimated value of the car at the end of the lease, in this case $7,177.50.

19. The printed form of lease used by Twin and GECAL does not provide for disclosure to the consumer of the "capitalized cost."

20. The average consumer does not know how to calculate or estimate the "capitalized cost" from the lease.

21. Plaintiff did not realize at the time she leased the car that the "capitalized cost" on which all of the lease figures were based exceeded the manufacturer's suggested resale price of the car.

22. Plaintiff had originally visited Twin for the purpose of buying a car, and had negotiated to purchase the same vehicle at a price substantially less than $20,033.90. However, Twin convinced plaintiff to lease the vehicle instead of purchasing it. Instead of using the negotiated price, or even the manufacturer's suggested resale price, as the basis for the lease calculations, Twin used $20,033.90.

MR. BLANK'S
TRANSACTION WITH GECAL

23. On April 18, 1989, Mr. Blank entered into a consumer automobile lease with GECAL, through its agent KYO (both of which are lessors with respect to the lease), covering the lease of a 1989 Nissan 240 automobile. The vehicle was leased for purposes of personal transportation, as indicated by a box on the lease form. The term of the lease was 60 months. The total of payments under the lease was $22,166.40. In connection with this transaction, GECAL issued a combination lease contract/ Consumer Leasing Act disclosure statement. *Exhibit C*, attached, is a true and accurate copy of this document.

24. On information and belief, GECAL supplied KYO with blank copies of *Exhibit C*, which KYO kept at its place of business.

25. As set forth in *Exhibit C*, it was agreed between the parties that payments were to be made to GECAL and that the lease disclosures were made on behalf of GECAL.

26. At the time this action was filed, Mr. Blank wished to return the vehicle to GECAL, prior to the scheduled expiration of the lease. Subsequent to the filing of this action, Mr. Blank

returned the vehicle to GECAL's agent KYO. Mr. Blank subsequently received demands for the payment of early termination charges, inconsistently stated to be $17,834.61 minus the realized value of the car and $18,822.15 minus the realized value of the car.

MR. CARONE'S TRANSACTION WITH GECAL

27. On March 21, 1988, Mr. Carone entered into a consumer automobile lease with GECAL, through an agent of GECAL called Classic Auto Leasing, Inc. ("Classic"). Classic was an Illinois corporation which was involuntarily dissolved in 1989 and is believed to be defunct. Both GECAL and Classic were lessors with respect to the lease, which covered a 1988 Mercury Grand Marquis automobile. The vehicle was leased for purposes of both personal transportation and some limited business purposes, as indicated by checking the appropriate boxes on the lease form. The term of the lease was 66 months. The total of payments under the lease was $21,830.98. In connection with this transaction, GECAL issued a combination lease contract/ Consumer Leasing Act disclosure statement. *Exhibit D*, attached, is a true and accurate copy of this document.

28. On information and belief, GECAL supplied Classic with blank copies of *Exhibit D*, which Classic kept at its place of business.

29. As set forth in *Exhibit D*, it was agreed between the parties that payments were to be made to GECAL and that the lease disclosures were made on behalf of GECAL.

Appendix I

MR. GEORGIAS' TRANSACTION WITH GECAL

30. On March 10, 1990, Mr. Georgias entered into a consumer automobile lease with GECAL, through an agent of GECAL called Castle Olds-Honda ("Castle"). Both GECAL and Castle were lessors with respect to the lease, which covered a 1990 Honda Accord automobile. The vehicle was leased for purposes of personal, family or household purposes. The term of the lease was 48 months. The total of payments under the lease was $15,595.20. In connection with this transaction, GECAL issued a combination lease contract/ Consumer Leasing Act disclosure statement. *Exhibit E*, attached, is a true and accurate copy of this document.

31. On information and belief, GECAL supplied Classic with blank copies of *Exhibit E*, which Castle kept at its place of business.

32. As set forth in *Exhibit E*, it was agreed between the parties that payments were to be made to GECAL and that the lease disclosures were made on behalf of GECAL.

33. *Exhibit E* failed to disclose the "Estimated End of Term Wholesale Value" which is necessary in order to calculate early termination liability using the formula in the lease. *Exhibit E* also failed to disclose the estimated official taxes and fees payable under the lease and the total of monthly payments due under the lease.

34. Mr. Georgias returned the vehicle to Castle prior to the end of the lease. GECAL has demanded that he pay the early termination charges. Mr. Georgias refuses to do so.

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MS. BEASLEY'S TRANSACTION WITH GECAL

35. On July 27, 1989, Ms. Beasley entered into a consumer automobile lease with GECAL, through an agent of GECAL called Continental Honda ("Continental"). Both GECAL and Continental were lessors with respect to the lease, which covered a 1989 Honda Civic automobile. The vehicle was leased for purposes of personal, family or household purposes. The term of the lease was 60 months. The total of payments under the lease was $12,904.80. In connection with this transaction, GECAL issued a combination lease contract/ Consumer Leasing Act disclosure statement. *Exhibit F*, attached, is a true and accurate copy of this document.

36. On information and belief, GECAL supplied Continental with blank copies of *Exhibit F*, which Continental kept at its place of business.

37. As set forth in *Exhibit F*, it was agreed between the parties that payments were to be made to GECAL and that the lease disclosures were made on behalf of GECAL.

38. Ms. Beasley's lease was terminated in June, 1992, prior to the end of the lease. GECAL has demanded that she pay early termination charges of $6,706.49. Ms. Beasley disputes these charges and seeks a judicial determination of their legality.

MR. RICHARD'S TRANSACTION WITH GECAL

39. On April 6, 1992, Mr. Richard entered into an automobile lease with GECAL, through an agent of GECAL called Jacobs Twin Honda ("Jacobs"). Both GECAL and Jacobs were lessors with respect to the lease, which covered a 1992

Honda Accord. The term of the lease was 60 months. The total of monthly payments under the lease was $23,938.80. In connection with this transaction, GECAL issued a combination lease contract/ Consumer Leasing Act disclosure statement. *Exhibit G*, attached, is a true and accurate copy of this document.

40. On information and belief, GECAL supplied Jacobs with blank copies of *Exhibit G*, which Jacobs kept at its place of business.

41. As set forth in *Exhibit G*, it was agreed between the parties that payments were to be made to GECAL and that the lease disclosures were made on behalf of GECAL.

42. Mr. Richard desired to terminate his lease early, but did not wish to be subjected to GECAL's illegal early termination charges. Mr. Richard therefore seeks a judicial determination of the legality of GECAL's early termination charges.

CONSUMER LEASING ACT

43. The federal Consumer Leasing Act, 15 U.S.C. §1667 et seq. ("Consumer Leasing Act"), and implementing Federal Reserve Board regulations, 12 C.F.R. part 213 ("Regulation M"), and Staff Commentary, 12 C.F.R. part 213 Supp. I ("Commentary"), require extensive disclosures in consumer lease transactions and regulate certain substantive terms of such transactions.

44. The Consumer Leasing Act and Regulation M apply to any "consumer lease." A "consumer lease" is defined as a "contract in the form of a lease or bailment for the use of

personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease . . . ." Leases for "agricultural, business, or commercial purposes" are excluded. 15 U.S.C. §1667(1).

45. The Consumer Leasing Act provides for substantive regulation of charges for early termination, delinquency and default:

> **Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.**

15 U.S.C. §1667b(b).

46. The Consumer Leasing Act and Regulation M also require a "lessor" to provide a "lessee" with extensive disclosures prior to the consummation of a "lease," analogous to those required in the case of credit transactions by the Truth in Lending Act. 15 U.S.C. §1667a. The disclosures must be made "clearly, conspicuously, [and] in meaningful sequence" and either on a separate written statement or in the contract, "above the place for the lessee's signature." 12 C.F.R. §213.4(a). The Staff Commentary requires that all lease disclosures be "reasonably understandable."

47. The disclosures must be "made together on a single page (which may include both sides) and above the place for the lessee's signature." (Commentary, §4(a)(2)) No required disclosures may be in fine print on the back or on a separate piece of paper.

48. The specific information that must be disclosed includes:

a. "The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments." 12 C.F.R. §213.4(g)(10).

b. "A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination." 12 C.F.R. §213.4(g)(12).

c. "A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property." 12 C.F.R. §213.4(g)(7).

49. The Consumer Act provides that any lessor who violates any requirement imposed by 15 U.S.C. §§1667a, 1667b, and the implementing regulations is liable as provided in the Truth in Lending Act, 15 U.S.C. §1640.

APPLICABILITY OF CONSUMER LEASING ACT TO PLAINTIFFS' TRANSACTION

50. The Consumer Leasing Act and Regulation M were applicable to the leases of plaintiffs Ms. Williams, Mr. Georgias, Mr. Carone, Mr. Blank and Ms. Beasley because:

Appendix I

a. GECAL, Twin, KYO, Castle and Continental were each a "lessor," in that each was regularly engaged in the business of leasing and offering to lease vehicles to natural persons for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family or household purposes.

b. Plaintiffs Ms. Williams, Mr. Georgias, Mr. Carone, Mr. Blank and Ms. Beasley are natural persons.

c. Plaintiffs Ms. Williams, Mr. Georgias, Mr. Carone, Mr. Blank and Ms. Beasley leased the vehicles for personal, family and household purposes, as indicated by checking the "personal" box on the lease form.

d. The agreements represented by *Exhibit A-G* are "contract[s] in the form of a lease . . . for the use of personal property by a natural person."

e. The term of each lease exceeded four months.

f. The total contractual obligation under each lease did not exceed $25,000.

EARLY TERMINATION AND DEFAULT CHARGES

51. The GECAL lease form fails to disclose default and early termination charges in an understandable manner.

52. Default liability is imposed by item 1(O). The second Item 1(0)(iv), setting forth part of the charges upon default, requires reference to Item 1(K), which begins with the confusing language "If I am not in default . . ."

Appendix I

53. Item 1(K) states:

If I am not in default, I have the right at any time upon thirty (30) days prior written notice to terminate this Lease Agreement by payment of the sum of the following amounts:

(i) a disposition fee of $250;

(ii) any monthly lease payments currently due and unpaid or other amounts or charges arising from my failure to keep my promises under this Lease Agreement, including without limitation the amount you must spend to put the Vehicle in good operating order and appearance as required by Item 1(F);

(iii) where the Balance Subject to Lease Charge, as defined in Item 1(D), less depreciation taken to date, as described in Item 1(D), is greater than Vehicle's Realized Value, as defined below, the difference by which is greater;

(iv) an early termination charge equal to the number of Total Base Monthly Payments, Item 2(C), shown in the chart below, which is based upon the percentage of months in the Lease Term which have expired (this percentage is calculated by dividing the number of months expired in the Lease Term by the total number of months in the Lease Term).

Appendix 1

% of Months in Lease Term Expired	Number of Total Base Monthly Payments Due
0-25%	6
26-50%	5
51-75%	4
76-99%	Lesser of 3 or the number of remaining months

(v) any official fees and taxes imposed in connection with termination of this Lease Agreement.

My early termination liability, if I do not purchase the Vehicle, will be affected by the Realized Value of the Vehicle. The Realized Value may be determined in one of the following ways: (i) by a written agreement between you and me if it is signed 10 days prior to the date of early termination; (ii) by a professional appraisal obtained at my expense of the wholesale value of the Vehicle 10 days prior to the date of early termination if you and I can each agree to my selection of an independent third party qualified to make the appraisal; (iii) if the Realized Value is not determined by the date of early termination you will determine Realized Value in a commercially reasonable manner in accordance with accepted practices in the automobile industry for determining the value of used vehicles; or (iv) if the Vehicle has been stolen or destroyed the Realized Value will be the amount of any proceeds of the insurance coverage maintained by me for the Vehicle.

Appendix 1

I understand that the Realized Value amount will be reduced by the expenses of sale and any official or other fees and taxes incurred upon Vehicle disposition.

54. A critical element required to apply Item 1(K) is the "Adjusted Lease Balance," described as follows in Item 1(D):

DEFINITION OF ADJUSTED LEASE BALANCE
During the Lease Term you will earn total lease charges equal to the product of the number of months in the Lease Term and the Total Base Monthly Payment minus Average Monthly Depreciation and applicable sales/ use taxes, Item 2(C). Although the amount of each Total Base Monthly Payment will not charge (assuming current sales/ use tax rates do not change), the depreciation and lease charge portions will differ with each monthly payment. This is why the amount shown in Item 2(C) is labeled "average" monthly depreciation. The lease charges will be earned by you on a constant yield basis in relation to the Adjusted Lease Balance as it declines during the Lease Term. At any given time, the Adjusted Lease Balance is the difference between the Balance Subject to Lease Charge and the sum of (a) all depreciation amounts applied to the Balance Subject to Lease Charge to date and (b) one Total Base Monthly Payment, less applicable sales/use taxes, Item 2(c). The Balance Subject to Lease Charge is equal to the sum of (a) the Estimated End of Term Wholesale Value, Item 2(B), and (b) the product of the Average Monthly Depreciation in Item 2(C) and the number of months in the Lease

Term, Item 2(A). These calculations follow the rules for journal entries for lessors as to "Direct Financing Leases" set forth in the Financial Accounting Standards Board Rule 13. The monthly lease charge calculations are based on the assumptions that the initial monthly lease payment is due when I sign this Lease Agreement, the remaining monthly lease payments are due on the same day of each succeeding month, you will receive monthly lease payments on their exact due dates, and the Adjusted Lease Balance in existence as of the beginning of a month would be outstanding for that entire month.

UNREASONABLE NATURE OF TERMINATION/ DEFAULT CHARGES

55. For multiple reasons, the provisions in the GECAL lease form exemplified by *Exhibits A-G* dealing with early termination and default charges are unlawfully calculated to produce charges which are unreasonable and not related to any actual or anticipated harm from default or early termination.

Manipulation of Depreciation Component of Lease Payments

56. The total of payments under a lease consists of a depreciation component plus a charge for paying in monthly installments — the equivalent of interest. If the lease is terminated early, the lessee is entitled to a rebate of the unearned portion of the interest equivalent. To the extent that the depreciation portion of the monthly payments made through the date of the early termination does not compensate the lessor for the actual depreciation on the vehicle, the lessor incurs a loss for which it may be compensated.

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57. The depreciation component can be manipulated by a lessor, so that in the event of early termination "depreciation" is calculated on an excessive amount, and the amount of "interest equivalent" subject to rebate to the consumer is too small. This is detrimental to the lessee because the higher the "Balance Subject To Lease Charge" is, the higher is the early termination charge. Under lease Item 1(K)(iii), upon early termination, the consumer must pay the difference between actual depreciation and the amount paid toward depreciation in the lease payments.

58. GECAL has a policy and practice of manipulating the depreciation component in this manner. This is done, on information and belief, according to a standard formula used by GECAL.

59. The depreciation component ("Balance Subject to Lease Charge") is overstated if the total of the depreciation component and the stipulated value of the vehicle at the end of the lease term and any down payment ("capitalized cost reduction") exceeds the normal selling price for the vehicle. If that is the case, GECAL is in effect providing that upon early termination the lessee will be charged for depreciation on the assumption that the vehicle was substantially more expensive than it in fact is.

60. The "Balance Subject To Lease Charge" at the inception of Ms. Williams' lease was $18,033.90 (the sum of the "Estimated End of Term Wholesale Value of the Vehicle" and the product of the "Average Monthly Depreciation" and number of months in the lease term). This is approximately $3,000 higher than the retail price of the car leased by Ms. Williams.

61. The "Balance Subject To Lease Charge" at the inception of Mr. Blank's lease was $20,451.40 (the sum of the "Estimated End of Term Wholesale Value of the Vehicle" and the product of the "Average Monthly Depreciation" and number of months in the lease term). This is approximately $3,000 higher than the retail price of the car leased by Mr. Blank.

62. On information and belief, the "Balance Subject to Lease Charge" at the inception of Mr. Carone's lease was at least $1,000 in excess of the manufacturer's suggested resale price of the vehicle.

63. Since few if any vehicles are actually sold to retail purchasers for 100% of the manufacturer's suggested retail price, the actual overstatement of the depreciation component, for which the lessee is debited on early termination, and the understatement of the interest component, is larger.

64. This formula, which is part of the form provisions of the GECAL lease, is the same as to all members of the class, and alone ensures that the early termination charge provided by lease Item 1(K)(iii) will be unreasonable.

Use Of Amount Realized By
Selling Vehicle at Wholesale Auto Auction

65. The early termination formula in the GECAL lease then credits the consumer with the "Realized Value of the Vehicle". This aspect of the early termination charge calculation is unreasonable because the stipulated end of term value is more than the legitimate wholesale value, whereas upon early termination the vehicle is sold at an auction, generally at a very low "wholesale value."

66. GECAL has a practice of making the numbers in a lease *look* reasonable by overstating the expected value of the vehicle at the end of the lease. GECAL has standard formulas for determining the expected value of a vehicle at the end of the lease.

67. The lessee receives the benefit of the overstated residual value only in the minority of cases where the leases are terminated on schedule. The large numbers of lessees who terminate early have their liability determined by the price the car brings at a wholesale auto auction, resulting in disproportionately large deficiencies. These deficiencies are not expected by most lessees, who assume that the stated residual value is accurate and do not realize that lessors have an incentive to manipulate the residual value.

68. The figures stated for "Estimated End of Term Wholesale Value" in the plaintiffs' leases are inflated and do not reflect the actual wholesale value of the vehicles, notwithstanding the use of the word "wholesale:"

a. In Ms. Williams' lease, the estimated end of term wholesale value was listed as $7,177.50. However, a reasonable estimate of the value of Ms. Williams' vehicle after 60 months was only $5,100. This allegation is based on the "Black Book," an accepted automobile industry publication, which estimates the wholesale value of used vehicles. Thus the figure stated in the lease is greatly in excess of a legitimate wholesale value.

b. In Mr. Blank's lease, the estimated end of term wholesale value was listed as $6,546.40. However, a reasonable estimate of the value of Mr. Blank's vehicle

after 60 months was only $3,975. This allegation is based on the "Black Book," an accepted automobile industry publication, which estimates the wholesale value of used vehicles. Thus the figure stated in the lease is greatly in excess of a legitimate wholesale value.

c. In Mr. Carone's lease, the estimated end of term wholesale value after 66 months was listed as $5,195. The reasonable value for his vehicle after only 60 months was only $4,800. Thus the figure stated in the lease exceeded a legitimate wholesale value.

d. In Ms. Beasley's lease, the estimated end of term wholesale value after 60 months was listed as $3,877.83. A reasonable estimate for her vehicle after 60 months was only $2,900. Therefore, the figure stated in her lease exceeded a legitimate wholesale value.

e. In Mr. Richard's lease, the estimated end of term wholesale value after 60 months was listed as $7,548.60. A reasonable estimate for his vehicle after 60 months was only $5,475. Therefore, the figure stated in his lease exceeded a legitimate wholesale value.

69. As a result of the manipulation of the residual value, the shifting of the risk will normally increase GECAL's return upon early termination above what one would expect based on the predicted resale value or residual value.

70. The practice of overstating the expected value of the vehicle at the end of the lease is particularly advantageous to any leasing company which either is associated with a vehicle manufacturer or (as GECAL does) uses car dealers to originate

leases. After the consumer is shocked by the magnitude of the early termination liability, the leasing company can offer to compromise the liability if the consumer leases or finances another vehicle from the same leasing company. The proportion of lessees who lease another vehicle from the same leasing company is significantly higher than the proportion of car buyers who purchase the same make of vehicle the next time they need a car, some statistics reporting 50% or greater repeats.

71. While the lease provides that a lessee may obtain an appraisal, this does not provide adequate protection for the lessee. The appraiser simply determines the price for which the vehicle will sell at a wholesale auto auction. The appraisal mechanism cannot protect the lessee against the deception and unfairness involved in selecting an arbitrarily inflated residual value and then using the price of the vehicle at a wholesale auto auction to determine the lessee's liability on early termination.

72. Selling the vehicle is not necessary to determine its actual or reasonable value upon early termination. The same calculation that GECAL uses to determine a residual value at the scheduled end of the lease also produces a residual value at other points in the lease term.

Additional 3-6 Months of Lease Payments

73. The early termination charges in Item 1(K)(iv) provide further overcompensation to GECAL. There is no anticipated damage equal to 3-6 months of lease payments, which is what GECAL charges in Item 1(K)(iv), especially in light of the excess charges resulting from Item 1(K)(iii).

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Failure to Adjust Residual Value To Account for Fact That Vehicle Is Received Back Before End of Term

74. It is unreasonable for GECAL to use the residual value figure specified in the lease as part of the computation without adjustment to take into account the fact that it is receiving the vehicle back early. If a consumer completes the lease according to its terms, GECAL would receive at the scheduled termination date property with an agreed residual value as set forth in the lease — for example, $7,177.50 in the Williams lease. Even if the vehicle was in fact worth less than $7,177.50, that value was stipulated for the vehicle, as of the scheduled termination date. By getting property with an agreed value of $7,177.50 back prior to the scheduled termination date, GECAL receives a benefit worth more than $7,177.50. By insisting that the value of receiving $7,177.50 now is identical to the value of receiving $7,177.50 in the future, GECAL's formula is calculated to produce unreasonable charges upon early termination.

Cumulative Effect of Charges

75. The charges described above, individually and in combination, are unreasonable. GECAL's standard form lease contains convoluted and all but impossible to understand procedures grossly unfavorable to consumers and which guarantee that the early termination charges will be far in excess of "an amount which is reasonable in the light of the anticipated or actual harm caused by the . . . early termination . . . ."

76. The liability is then modified, in the case of an insurance total loss prior to the scheduled termination of the lease, by *Exhibit B*. *Exhibit B* is a separate piece of paper. By

putting part of the early termination formula on a separate piece of paper, defendants violated the Consumer Leasing Act.

CLASSWIDE DISCLOSURE VIOLATIONS

77. The form of contract and disclosure statement represented by *Exhibit A-G* does not comply with the disclosure requirements under the Consumer Leasing Act and Regulation M for the following reasons.

Confusing Cross-References

78. The GECAL lease form further fails to disclose in a clear and conspicuous manner, and fails to disclose in meaningful sequence, default charges. The second Item 1(0)(iv), setting forth part of the charges upon default, requires reference to Item 1(K), which begins with the confusing language "If I am not in default . . ." and, in turn, requires one reference to Item 1(F), two to Item 1(D) and another to Item 2(C) to compute charges. Further, Item 1(D) is incomprehensible and, in turn, requires reference to Item 2(C). By way of contrast, see ¶13 of the Model Closed End Lease published by the Federal Reserve Board, attached as *Exhibit H*, demonstrating how easily this disclosure may be made.

Warranty Identification

79. The GECAL lease form also fails to identify express warranties and guarantees made by the manufacturer. 12 C.F.R. §213.4(g)(7).

80. Item 1(G) of the GECAL lease form provides:

> **VEHICLE WARRANTIES**
> I understand that if the Vehicle is subject to a manufacturer's new car warranty, you assign to me all the rights and remedies you have under that warranty to the extent they are assignable. I ACKNOWLEDGE THAT I AM LEASING THE VEHICLE FROM YOU "AS IS" AND THAT YOU DO NOT MAKE ANY WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE DESIGN, COMPLIANCE WITH SPECIFICATIONS, OPERATION OR CONDITION OF, OR AS TO THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP IN THE VEHICLE OR ANY OF ITS COMPONENTS, AND YOU SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE VEHICLE OR ANY OF ITS COMPONENTS FOR ANY PARTICULAR PURPOSE.

81. The statement in the GECAL lease form that "if" there is a warranty such rights and remedies GECAL has as are assignable are assigned fails to "identify" any warranties, in violation of 12 C.F.R. §213.4(g)(7). It also requires the lessee to make a determination of what warranty rights GECAL (a commercial purchaser of the vehicle for use in its business of leasing) has, and the extent to which its warranty rights are assignable.

82. The GECAL lease form also purports to require that if the lessee desires that the realized value of the vehicle be

determined by appraisal, that the lessee must obtain it 10 days prior to the date of the early termination. Item 1(K). This makes the appraisal remedy unavailable in cases of early termination by default, because the default clause (Item 1(O)) provides that in the event of default GECAL will early terminate the lease by unilateral action without giving notice to the lessee and then repossess the vehicle. Regulation M, 12 C.F.R. §213.4(g)(14), gives the lessee the right to an appraisal in all cases of early termination, and requires that the lessee be informed of that right.

83. Furthermore, the next sentence suggests that the consumer receives no implied warranties, which is not the case. Under the Magnuson-Moss Consumer Warranty Act, if a seller or manufacturer provides a written warranty or service contract, he is precluded from disclaiming implied warranties, 15 U.S.C. §2308(a), and any attempted disclaimer "shall be ineffective," 15 U.S.C. §2308(c). Any GECAL lease involves a sale of the vehicle to GECAL under circumstances that (i) entitle the lessee to benefit from the manufacturer's warranties as a subsequent transferee, and (ii) preclude the manufacturer from disclaiming implied warranties. Consequently, GECAL's "disclosure" tells the consumer that he does not have warranty protection that he does in fact have.

UNFAIR AND DECEPTIVE PRACTICES

84. It is unfair and deceptive to write a lease using a "capitalized cost" in excess of the manufacturer's suggested resale price of the vehicle without specifically disclosure of the fact to the lessee.

85. Consumers do not ordinarily pay more than the manufacturer's suggested resale price when purchasing a vehicle.

86. No consumer who understood that the capitalized cost was the economic equivalent to the purchase price would sign a lease in which the capitalized cost exceeded the manufacturer's suggested resale price.

87. The only way in which GECAL and its dealers, such as Twin, can induce consumers to sign leases in which the capitalized cost exceeds the manufacturer's suggested resale price is by deceptive misrepresentation, such as by negotiating a purchase price and then "selling" the consumer on a lease using a higher capitalized cost, or nondisclosure of the capitalized cost, which is broken up into several components and not disclosed as a single number anywhere on the lease form.

88. GECAL competes for the business of car dealers, such as Twin, by offering to advance them amounts pursuant to auto leases that exceed amounts which other leasing companies are willing to advance.

89. It has long been GECAL's policy to advance in excess of 100% of the manufacturer's suggested resale price to the dealer.

90. GECAL thereby encourages dealers to use a "capitalized cost" in excess of the manufacturer's suggested resale price and to use improper sales tactics to induce consumers to sign such leases.

91. The use of a "capitalized cost" in excess of the manufacturer's suggested resale price has long been known to GECAL as a deceptive practice. A 1989 report of the New York Attorney General found that this was a significant problem:

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> The initial value of the car being leased (the cost of acquisition to the lessor) is traditionally not disclosed to lessees. Many lessors artificially inflate this value so that they can increase the amount of depreciation, the major component of the lessee's monthly payments. The higher the initial value, the greater the depreciation and the greater the monthly payment and, consequently, at early termination, the lessee will be responsible for a greater amount of depreciation.
>
> For example, some lessors reportedly assign an amount equal to 110% of the "Manufacturer's Suggested Retail Price" (MSRP) for the initial value of the cars leased. Even using MSRP for the initial value would constitute an exaggeration, in most instances, because cars are usually purchased for substantially less than the MSRP. (Attorney General of New York, *Early Termination Clauses in Long Term Automobile Leases: Consumers are Paying Too Much* (June 1989), pp. 7-8)

92. GECAL, knowing full well of the deceptive nature of using a capitalized cost in excess of the manufacturer's suggested resale price, intentionally continued to encourage the practice.

CLASS ALLEGATIONS

93. This action is brought on behalf of three classes, designated A, B and C.

94. Class A consists of all persons who satisfy the following criteria:

a. They leased a car.

b. The lease was written on the same GECAL form as *Exhibit A* and *Exhibits C-G.*

c. The lease was assigned to GECAL.

d. The total of payments under the lease was less than $25,000.

e. The lease is marked as being for personal, family or household purposes.

f. The term of the lease exceeds four months.

95. Class A includes all persons whose leases were outstanding after a date one year prior to the filing of this action.

96. Class B consists of all persons who satisfy the following criteria:

a. They leased a car.

b. The lease was written on the same GECAL form as *Exhibit A* and *Exhibits C-G.*

c. The lease was assigned to GECAL.

d. The lease is marked as being for personal, family or household purposes.

e. The term of the lease exceeds four months.

f. The capitalized cost exceeded the manufacturer's suggested resale price.

97. Class B includes all persons whose leases were outstanding after a date three years prior to the filing of this action.

98. Class C consists of all persons who satisfy the following criteria:

a. They leased a car.

b. The lease was written on the same GECAL form as *Exhibit A* and *Exhibits C-G.*

c. The lease was assigned to GECAL.

d. The term of the lease exceeds four months.

e. The capitalized cost exceeded the manufacturer's suggested resale price.

99. Plaintiffs allege on information and belief that the classes are so numerous that joinder of all members is impractical. This allegation is based on the fact that the leases represented in *Exhibits C-G* are standard printed forms that contain a printed legend stating that the form was promulgated in January, 1987. The Carone transaction occurred 13 months later, the Blank transaction two years later, the Georgias transaction more than three years later and the Richards' transaction more than five years later. The lease represented in *Exhibit A* is a standard printed form that contains a printed legend stating that the form was promulgated in June 1989.

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The Williams transaction occurred more than four years later. Therefore it is clear that the form was used for at least seven years. During the course of that period GECAL undoubtedly entered into a sufficient number of transactions using the same standard printed form to satisfy the numerosity requirement as to both the class and the subclass — *i.e.*, more than 20-40.

100. There are questions of law and fact common to the class and subclass. The principal issues are:

a. Whether the charges for early termination, delinquency and default in the GECAL lease form comply with the substantive restrictions on such charges imposed by the Consumer Leasing Act.

b. Whether the GECAL lease form complies with the disclosure requirements of the Consumer Leasing Act.

c. Whether the charges for early termination, delinquency and default in the GECAL lease form are unenforceable penalties under state law.

d. Whether the imposition of unreasonable charges that are obscurely and confusingly described, or not disclosed in accordance with applicable disclosure requirements is an unfair and deceptive practice within the meaning of state statutes, such as the Illinois Consumer Fraud Act, prohibiting unfair and deceptive practices in consumer transactions.

101. Plaintiffs will fairly and adequately protect the interests of the class. Although their personal claims are not large enough to warrant individual litigation of complex Truth

in Leasing Act issues against a major financial institution such as GECAL, they have enough at stake to ensure that they will vigorously litigate this matter. They wish to obtain redress of the wrong. To that end, they have retained counsel experienced in handling class actions and actions involving unlawful business practices, including claims under the Consumer Leasing Act. Neither plaintiffs nor their counsel have any interests which might cause them not to vigorously pursue this action.

102. A class action is an appropriate means for the fair and efficient adjudication of this dispute.

COUNT I — IMPOSITION OF UNREASONABLE TERMINATION CHARGES IN VIOLATION OF CONSUMER LEASING ACT

103. Plaintiffs incorporate ¶¶1-76 and ¶¶93-102.

104. This claim is brought on behalf of Class A.

105. GECAL has imposed and/or collected the default and early termination charges specified in the form exemplified by *Exhibits A-G* from numerous consumers. Other consumers are subject to such charges by reason of having signed contracts using the same form as *Exhibits A-G*.

106. Twin and KYO are legally responsible for the inclusion of provisions specifying unlawful termination charges in leases it originated.

107. Plaintiffs Williams and Carone desire to terminate their lease prior to its scheduled expiration. Plaintiffs Blank,

Beasley and Georgias have terminated their leases prior to their scheduled expiration. Plaintiffs are therefore subject to the early termination charges provided for by the GECAL lease form.

108. A dispute exists between plaintiffs and the class, on the one hand, and GECAL and its agents Twin and KYO, on the other, concerning the validity of these termination charges.

WHEREFORE, the Court should enter judgment in favor of plaintiffs and Class A and against GECAL, and to the extent leases were entered into through Twin and KYO, those companies as well, granting the following relief:

a. The amounts specified in 15 U.S.C. §1640.

b. Declaring that the default and early termination charges in the form represented by *Exhibits A-G* are unlawful and unenforceable, and requiring a refund of all such charges that have been collected.

c. Attorney's fees, litigation expenses and costs.

d. Such other or further relief as the Court deems appropriate.

COUNT II — DISCLOSURE VIOLATIONS UNDER CONSUMER LEASING ACT

109. Plaintiffs incorporate ¶¶1-54, 77-83 and 93-102.

110. This claim is brought on behalf of Class A.

111. By reason of the disclosure violations specified in ¶¶78-84, GECAL is liable under 15 U.S.C. §1640.

112. Twin and KYO are legally responsible for the disclosure violations in connection with leases they originated.

WHEREFORE, the Court should enter judgment in favor of plaintiffs and Class A and against GECAL, and to the extent leases were entered into through Twin and KYO, those companies as well, granting the following relief:

a. The amounts specified in 15 U.S.C. §1640.

b. Declaring that the default and early termination charges in the form represented by *Exhibits A-G* are unlawful and unenforceable, and requiring a refund of all such charges that have been collected.

c. Attorney's fees, litigation expenses and costs.

d. Such other or further relief as the Court deems appropriate.

COUNT III — CONSUMER FRAUD ACT

113. Plaintiffs incorporate ¶¶1-54, 84-92, and 93-102.

114. This claim is brought on behalf of Class B.

115. GECAL violated §2 of the Consumer Fraud Act with respect to all members of Class B.

116. Twin and KYO violated §2 of the Consumer Fraud Act with respect to all members of Class B that leased through Twin and KYO.

WHEREFORE, the Court should enter judgment in favor of plaintiffs and Class B and against GECAL, Twin and KYO granting the following relief:

a. Actual and punitive damages.

c. Attorney's fees, litigation expenses and costs.

d. Such other or further relief as the Court deems appropriate.

COUNT IV — DECLARATORY RELIEF UNDER STATE LAW

117. Plaintiffs incorporate ¶¶1-76 and 93-102.

118. This claim is brought on behalf of Class C.

119. The default and early termination charges specified in *Exhibits A-G* are unenforceable penalties under state law.

120. Twin and KYO are legally responsible for the inclusion of provisions specifying unlawful termination charges in leases it originated.

121. Plaintiffs Williams, Carone and Richard desire to terminate their leases prior to their scheduled expiration. Plaintiffs Blank, Georgias and Beasley have terminated their leases prior to their scheduled expiration. Plaintiffs are therefore subject to the early termination charges provided for by the GECAL lease form.

122. A dispute exists between plaintiffs and the class, on the one hand, and GECAL, on the other, concerning the validity of these termination charges.

WHEREFORE, the Court should enter judgment in favor of plaintiffs and Class C and against GECAL, and to the extent leases were entered into through Twin and KYO, those companies as well, granting the following relief:

a. Declaring that the default and early termination charges in the form of lease attached as *Exhibits A-G* are unenforceable penalties and requiring a refund of all such charges collected.

b. Awarding costs.

c. Granting such other or further relief as the Court deems appropriate.

COUNT V — UNFAIR AND DECEPTIVE ACTS AND PRACTICES

123. Plaintiffs incorporate ¶¶1-102.

124. This claim is brought on behalf of Class C.

125. At all times during which GECAL used the form exemplified by *Exhibits A-G*, each state had in force a statute, modelled after the Federal Trade Commission Act, prohibiting unfair and deceptive acts and practices in connection with consumer transactions. The Illinois statute is the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 et seq. The statutes of other states are summarized in *Exhibit I*, attached. Plaintiffs allege that the Illinois statute applies to the entire class because the practices complained of were devised and implemented at GECAL's headquarters in Illinois, but may also rely on the statutes in force where the lessees reside.

126. The leasing of an automobile constitutes "trade and commerce" as defined in 815 ILCS 505/1(f); *Ill.Rev.Stats.*, ch. 121-1/2 ¶261(f), in that it involves the "advertising" and "distribution" of "services" and "property."

127. GECAL's confusing and unclear disclosure of early termination charges is deceptive in that it does not allow consumers such as the plaintiffs to adequately compare the advantages of leasing as compared to buying a vehicle, to compare GECAL's lease to other leases or to determine their potential liability if they are forced to terminate the lease early. It is also deceptive because it makes it difficult, if not impossible, for a consumer who is considering terminating a lease early to determine what the charges will be.

128. It is deceptive to fail to adequately disclose the applicable warranties because it has the effect of preventing consumers from taking advantage of those warranties that they are entitled to use and it makes it difficult for consumers to compare the warranties available under GECAL's lease with those available under other leases or when purchasing a vehicle.

129. It is a deceptive practice to manipulate the depreciation component so that in the event of early termination "depreciation" is calculated on an excessive amount, and the amount of "interest equivalent" subject to rebate to the consumer is too small, because this results in the early termination charge being excessive and not reflective of the lessor's losses upon early termination.

130. It is deceptive for GECAL to use the residual value figure specified in the lease as part of the computation or early termination without adjustment to take into account the fact

that it is receiving the vehicle back early because the average consumer is unable to determine that GECAL is receiving an unjustified windfall upon early termination.

131. The extent of liability upon early termination is a material fact to a consumer when deciding whether to lease or buy a vehicle, and in deciding whether or not to terminate a lease early.

132. GECAL imposed and/or collected the default and early termination charges specified in the form exemplified by *Exhibits A-G* from numerous persons. Other persons are subject to such charges by reason of having signed contracts using the same form.

133. A dispute exists between plaintiffs and the class, on the one hand, and GECAL, on the other, concerning the validity of these termination charges.

WHEREFORE, the Court should enter judgment in favor of plaintiffs and Class C and against GECAL, and to the extent leases were originated by KYO, that company as well, granting the following relief:

a. Declaring that the default and early termination charges in the form exemplified by *Exhibits A-G* are unlawful and unenforceable, and requiring a refund of all such charges that have been collected.

b. An injunction against further collection of such default and early termination charges.

c. Attorney's fees, litigation expenses and costs.

d. Such other or further relief as the Court deems appropriate.

COUNT VI — INDIVIDUAL COUNT FOR DISCLOSURE VIOLATIONS UNDER CONSUMER LEASING ACT

134. This Count is an individual count brought on behalf of Mr. Georgias. Mr. Georgias realleges ¶¶1-9, 30-34 and 77-83.

135. GECAL failed to disclose the "total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees or taxes." 12 C.F.R. §213.4(g)(4). *Exhibit E* was left blank on the lines that were designed for the disclosure of that information.

136. In addition to the disclosure problems with the early termination and default charges inherent in the lease form, GECAL failed to disclose "the amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments," 12 C.F.R. §213.4(a)(1), because *Exhibit E* does not state the "Estimated End of Term Wholesale Value of Vehicle," which is necessary in determining the penalty for early termination used in *Exhibit E*.

WHEREFORE, the Court should enter judgment in favor of Mr. Georgias and against defendant GECAL, granting the following relief:

a. The amounts specified in 15 U.S.C. §1640.

b. Declaring the default and early termination charges in the formula represented by *Exhibit E* is unlawful and unenforceable.

c. Attorneys fees, litigation expenses and costs.

d. Such other or further relief as the Court deems appropriate.

s/ Daniel A. Edelman
Daniel A. Edelman

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JURY DEMAND

Plaintiff demands trial by jury.

s/ Daniel A. Edelman
Daniel A. Edelman

APPENDIX J — SETTLEMENT AGREEMENT DATED JULY 21, 1995

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 94 C 7410
Judge Alesia
Magistrate Lefkow

STACEY WILLIAMS, et al.,

Plaintiffs,

v.

GENERAL ELECTRIC CAPITAL
AUTO LEASE, INC., et al.,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into as of this 21 day of July, 1995, by and among plaintiffs Stacey Williams, Staci Beasley, Peter Richard, Gary Blank, Salvatore Carone, and James Georgias ("Representative Plaintiffs"), suing for themselves and on behalf of all other persons similarly situated, by their counsel, and defendant General Electric Capital Auto Lease, Inc. ("GECAL"), (now known as General Electric Capital Auto Financial Services, Inc.).

WHEREAS the above-captioned action ("federal action") was instituted in this Court by Stacey Williams and is pending and undetermined among the parties;

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WHEREAS a separate putative class action (the "Illinois state action") has been instituted by the other Representative Plaintiffs in the Circuit Court of Cook County, Illinois, No. 91 L 11124, entitled *Blank, et al. v. Sun Hyundai and GECAL*, asserting similar claims (the federal action and the Illinois state action being referred to herein as the "Actions");

WHEREAS the parties now wish to terminate such Actions;

WHEREAS Representative Plaintiffs seek to represent a class composed of certain persons who leased automobiles from GECAL;

WHEREAS substantial uncertainty exists as to the liability of GECAL in the Actions and as to the nature and amount of relief, if any, to which plaintiffs and any class may be entitled in the Actions if liability is imposed on GECAL;

WHEREAS, subject to approval of the court, the parties wish to effect a compromise which they deem to be in the best interests of all parties, including the settlement class as defined in paragraph 3(a) herein (the "Class");

WHEREAS the attorneys for plaintiffs have conducted a thorough study and investigation of the law and the facts relating to the claims asserted in the Actions and have concluded, taking into account the benefits that the Class will receive as a result of this settlement and the risks and delays of further litigation, that the settlement provided herein is fair and reasonable and in the best interests of plaintiffs and members of the Class;

WHEREAS GECAL denies all allegations of wrongdoing and liability asserted in the Actions and maintains that it

conducted its dealings with plaintiffs and members of the Class in a lawful manner in all respects and in conformity with the Federal Consumer Leasing Act, the Illinois Consumer Fraud and Deceptive Business Practices Act and similar statutes of other states, and the common law of contracts; and

WHEREAS GECAL has further concluded because of the substantial expense of defending the Actions and the length of time necessary to resolve the issues presented herein, that the settlement provided herein is fair and reasonable, and that it is in its best interest to accept the terms of this Settlement Agreement;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the undersigned that the claims asserted in the Actions against GECAL shall be settled and compromised, subject to the approval of the Court, upon and subject to the following terms and conditions:

1. The settlement embodied in this Agreement shall apply to all persons in the Class as defined in paragraph 3(a) hereof and shall be in complete and final settlement of all claims asserted in the Actions, and all claims which might have been asserted in the Actions, on behalf of plaintiffs and the Class against GECAL, its successors and assigns, and its assignors, agents, affiliates, employees, directors and officers, both past and present, arising out of disclosures made on or in connection with vehicle leases assigned to GECAL, out of the reasonableness or validity of the charges and other terms contained in such leases, and out of the collection or attempted collection of charges imposed under such lease forms, except those claims excluded in paragraph 2(h) hereof.

Appendix J

2. If the settlement provided for herein becomes effective, as provided in paragraph 6 of this Agreement then:

(a) All Class members whose leases with GECAL are outstanding as of the date of this Agreement, or whose leases have terminated as of such date prior to the scheduled termination date, and who submit a valid Proof of Claim as described in paragraph 4 hereof will receive, depending upon their election in such Proof of Claim, *either* (i) a certificate which may be applied in the maximum amount of $50 (as provided in (c) below) to charges due on early termination under such leases when all other such charges are paid in full ("Early Termination Certificate"), *or* (ii) a certificate which may be applied in the maximum amount of $100 (as provided in (c) below) to payments (other than initial payments or deposits due at lease signing) on a new automobile lease assigned to GECAL ("New Lease Certificate").

(b) All Class members whose leases with GECAL have terminated as of the date of this Agreement on or after the scheduled termination date and who submit a valid Proof of Claim as described in paragraph 4 hereof will receive a New Lease Certificate.

(c) Upon expiration of the time for filing Proofs of Claim, the amounts of Early Termination and New Lease Certificates shall be determined as follows: The amount of each Early Termination Certificate shall equal the lesser of $50 or $2.5 million divided by the number of valid Proofs of Claim requesting

such Certificates, rounded to the nearest whole dollar amount. The amount of each New Lease Certificate shall be the lesser of $100 or $10 million divided by the number of valid Proofs of Claim requesting such Certificates, rounded to the nearest whole dollar amount.

(d) Only one Certificate will be issued for each lease qualifying a person or persons to be Class members, but persons who entered into more than one such lease may receive one Certificate for each lease. Certificates will be distributed within 90 days after the settlement becomes effective and will be valid for a period of eighteen months after the date they are issued. A Certificate may be used only by a Class member to whom it is issued. Only one Certificate may be used per lease, and receipt of a New Lease Certificate shall not give a Class member any right to enter into a new lease assignable to GECAL, which shall be entitled to apply its regular credit standards then in effect in determining the eligibility of any Class member for a new lease. When a New Lease Certificate is used, GECAL may determine in its discretion to which of the user's outstanding obligations the certificate is applied.

(e) GECAL shall pay attorneys' fees and expenses of counsel for plaintiffs and the Class ("Class Counsel") in this action in such amount as may be approved by the Court not to exceed $600,000. Class Counsel may, subject to approval by the Court, request additional fees from members of the

Class as long as such additional fees do not require any additional consideration whatever to be paid by GECAL, are accumulated and paid to Class Counsel no more often than semi-annually, and are payable only (i) from cash amounts otherwise payable by GECAL to Class members upon actual redemption of Early Termination Certificates with respect to early termination charges previously paid in full, or (ii) from amounts otherwise to be applied by GECAL to Class members' new lease payments upon actual use of New Lease Certificates. GECAL shall have no obligation to support such a request for additional fees but shall not oppose such a request. Class Counsel shall not request any amounts for fees and expenses other than provided for herein.

(f) GECAL shall pay the expenses of any notices to be sent to the Class in connection with this proposed settlement and of administering the settlement, and shall conduct all aspects of administering the settlement, subject to reasonable review by Class Counsel.

(g) Plaintiffs and their counsel shall return to GECAL all originals and copies of any documents or other records produced in this action by GECAL or derived from materials so produced which relate to the business operations of GECAL or in any way identify its customers or describe transactions with its customers.

(h) All claims of Class members who do not request exclusion shall be dismissed with prejudice,

whether or not they submit a timely Proof of Claim, and they shall be barred from bringing all other claims which might have been asserted in the Actions against GECAL, its successors and assigns, and its assignors, agents, affiliates, employees, directors and officers, both past and present, arising out of disclosures made on or in connection with vehicle leases assigned to GECAL, out of the reasonableness or validity of the charges and other terms contained in such leases, and out of the collection or attempted collection of charges imposed under such lease forms, except (i) claims against assignors of GECAL based upon representations other than the written terms of the lease, and (ii) claims based upon vehicle defects, property damage, personal injury or death, repossession or recovery of the leased vehicle, application of security deposits, or collection practices other than collection or attempted collection of amounts specified in the lease. Except as specifically provided herein, the settlement shall not affect other rights and obligations of Class members and GECAL under their leases.

(i) Representative Plaintiffs who have terminated their leases with GECAL shall be released from early termination charges under their leases except for obligations requiring them to maintain the leased automobiles in good repair, and GECAL shall pay each Representative Plaintiff the sum of $1,000.

3. As soon as practicable after the execution of this Agreement, the parties shall cause the Illinois state action to

be dismissed without prejudice subject to reinstatement if this Settlement Agreement is not approved, and plaintiffs in the Illinois state action shall file their claims in the federal action by joining therein. The parties shall then present this Agreement to the Court and request the Court to enter an Order which:

(a) certifies Representative Plaintiffs as representatives of a Class, for settlement purposes only, consisting of all persons in the United States other than residents of Connecticut who, on or after January 1, 1987, and prior to the date of this Agreement, entered into an automobile lease assigned to GECAL and written on a lease form prepared by GECAL which bears one of the identification numbers listed on Schedule A attached hereto.

(b) preliminarily approves the terms of the settlement provided for in this Agreement;

(c) directs that a hearing be held by the Court on such day and at such time as may be designated by the Court for the purpose of determining whether the settlement should be finally approved by the Court as fair, reasonable, and adequate to the Class; and

(d) approves the Notice of Pendency of Class Action, Proposed Class Settlement, and Hearing and the Proof of Claim attached hereto as Exhibit A, and the sending thereof by first-class mail individually addressed to each person meeting the above Class definition at his or her last address available in GECAL's records not less than 30 days prior to the hearing on the settlement as complete and adequate

in all aspects for the purpose of notifying the Class as to the proposed settlement, the hearing thereon, and the rights of members of the Class with respect thereto.

The parties shall submit to the Court a draft order in the form of Exhibit B hereto, which they agree fulfills the requirements of this paragraph.

4. The obligation of GECAL as set forth above to issue a Certificate to a member of the Class is contingent upon such member's submission of a valid Proof of Claim within 60 days after mailing of the notice of settlement. To be valid, a Proof of Claim must:

(a) be verified and in the form attached to the Notice of Pendency of Class Action, Proposed Class Settlement, and Hearing, which is Exhibit A hereto;

(b) be dated, certified, and signed as provided for therein;

(c) establish that the person submitting the claim is a member of the Class; and

(d) be mailed, postage prepaid, in an envelope post-marked within such 60 day period and addressed to:

GECAL Case Settlement
P.O. Box ____
_____, __ ____.

GECAL shall have the right to challenge the truth of statements in any Proof of Claim before the Court within 60 days after receipt, upon written notice to Class Counsel and the claimant.

5. The obligations of the parties to complete the settlement provided for under this Agreement are contingent upon entry of an order by the Court as provided in paragraph 3 of this Agreement and upon entry of a judgment by the Court which:

(a) approves this Agreement without modification (except insofar as the parties have agreed to such modification) as fair, reasonable, and adequate and directs its consummation according to its terms;

(b) dismisses, with prejudice and without costs, all claims asserted in the Actions and all claims which might have been asserted in the Actions by plaintiffs and the Class against GECAL, its successors and assigns, their assignors, agents, affiliates, employees, directors and officers, both past and present, and their assignees as described in paragraph 1 of this Agreement.

(c) finds that notice has been given to all persons meeting the Class definition in accordance with the requirements of Rule 23 of the Federal Rules of Civil Procedure; and

(d) approves attorneys fees and reimbursement of expenses to plaintiffs and Class Counsel no greater than those provided by this Agreement.

The parties shall submit to the Court a draft order in the form of Exhibit C attached hereto, which they agree fulfills the requirements of this paragraph.

Appendix J

6. This settlement shall become effective on the first day after a final judgment has been entered by the Court in conformity with paragraph 5 hereto on which either (a) the time for appellate review of such judgment has expired with no review being sought or (b) such judgment has been affirmed on appeal in all respects and no further right of appellate review exists.

7. If this Agreement is not approved by the Court in conformity with paragraph 5 hereof, or if it cannot become effective as provided in paragraph 6 hereof, then this Agreement and all papers submitted in connection with it shall not be offered or received in evidence in any proceeding, all findings and determinations made pursuant hereto shall be null and void, all parties shall stand in the same position as if this Agreement and any proceedings under it had not occurred, and this Agreement shall be of no further force and effect, except that the provisions of this paragraph and of paragraphs 9, 10 and 11 shall survive, and GECAL shall pay the expenses provided for in paragraph 2(f) to the extent incurred.

8. GECAL will have the option, at its sole discretion, to withdraw from the settlement in the event that more than 2,000 Class members, not including persons employed by GECAL, its affiliates, or dealerships offering GECAL leases, exclude themselves from participation in the Class.

9. It is expressly agreed and understood that this Agreement does not constitute an admission by any party and may not be admitted in evidence in any action involving any party except an action to enforce the terms thereof.

10. The undersigned parties and counsel agree that they shall not issue any press release or make any similar public

disclosure of the settlement or the terms thereof, except as required by law or order of court, and will respond to any inquiries from non-parties regarding the terms of the settlement solely by referring them to the court file in this matter.

11. This Agreement may be executed in separate counterparts.

IN WITNESS WHEREOF the parties and their counsel have caused this Settlement Agreement to be duly executed on this 21 day of July, 1995.

s/ Daniel A. Edelman
Daniel A. Edelman
Edelman & Combs
135 S. LaSalle Street
Suite 2040
Chicago, IL 60603
Attorney for Plaintiffs

* * *

IN WITNESS WHEREOF the parties and their counsel have caused this Settlement Agreement to be duly executed on this 21st day of July, 1995.

* * *

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC.

By: s/ [illegible]

Its: President

Appendix J

SCHEDULE A

410	1/85	
420	1/85	
430	1/85	
610U	8/85	
610U CA	1/86	
493 CA	11/85	(8019)
493	11/85	(6018)
494	11/85	(6018)
494 CA	11/85	(6019)
610 ME	9/87	(6010)
610 ME	6/86	(6010)
610 WI	3/86	(6015)
610 WI	2/88	(6015)
620	1/87	(6002)
620	6/88	(6002)
620	6/89	(6002)
620	5/94	(6002)
620	5/94	(6005)
620	7/94	(8002)
620 AL	11/88	(6037)

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620 CA	1/86	(6007)
620 CA	7/90	(6007)
620 CA	7/94	(6007)
620 CA	11/94	(6007)
620 CA	12/94	(6007)
620 CA	2/95	(6007)
620 CA	2/96	(6009)
620 FL	2/88	(6041)
620 FL	1/91	(6041)
620 ME	6/86	(6011)
620 ME	9/87	(6011)
620 MD	5/88	(6044)
620 MD	8/94	(6044)
620 MD	5/88	(6044)
620 MD	8/94	(6044)
620U	8/85	(6005)
620U	1/87	(6006)
620U	6/88	(6005)
620U	11/88	(6036)
620U	5/94	(6005)
620U	7/94	(6006)
620U	12/94	(6005)
620U	12/94	(6002)
620U CA	7/90	(6009)
620U CA	7/90	(6009)
620U CA	11/94	(6009)
620U CA	12/94	(6009)

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620U FL	1/91	(6042)
620U HI	5/92	(6094)
620U MD	8/94	(6045)
620U MD	5/88	(6045)
620U MD	10/88	(7045)
620U ME	6/86	(6014)
620U ME	9/87	(6014)
620U WI	6/86	(6024)
620U WI	2/88	(6024)
620U WI	7/94	(6024)
620U WI	12/94	(6024)
624	9/87	(6030)
624	1/89	(6030)
624	9/91	(6030)
624	1/93	(6030)
624 CA	9/87	(6031)
624 CA	1/89	(6031)
624 CA	1/93	(6031)
624 CA	1/95	(6031)
624U	1/95	(6030)
626 WI	1/95	(6030)
626U	12/92	(6092)
626U	1/95	(6030)
626U CA	1/95	(6031)
8020 CA	9/90	(6087)

8050AL	11/88	(6079)
628	9/93	(7050)
628 AL	9/93	(7051)
628 CA	9/93	(7052)
628 CA COL	7/94	(7050)
628 FL COL	9/93	(7053)
628 FL COL	8/94	(7053)
628 FL COL	4/95	(7053)
628 FL COL	8/94	(7063)
628 FL COL	4/95	(7063)
628 MD COL	9/93	(7054)
628 MD COL	2/95	(7054)
628 MD COL	2/95	(7054)
628 ME	9/93	(7055)
628 WI COL	12/93	(7056)
628 WI COL	1/95	(7056)
628U	9/93	(7050)
628U	7/94	(7050)
628U COL	7/94	(7060)
628U WI COL	1/95	(7066)
724	2/87	(8028)
724 CA	7/94 (8030)	(8031)
724U	1/95	(6030)
724U CA	1/95	(6031)

APPENDIX K — CLASS ACTION COMPLAINT IN *GWYNN R. DOONER, et al v. GE CAPITAL AUTO LEASE, INC., et al* DATED AND FILED JULY 3, 1996

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

GWYNN R. DOONER, DUDLEY E. WILLIAMS, JR., SUZANNE E. HARPER (aka SUZANNE E. SHEERAN), JAMES S. HARPER, JOHN A. WARD, JR. AND LISA G. WARD on behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

GE CAPITAL AUTO LEASE, INC., a corporation,

Defendant.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

INTRODUCTION

Plaintiffs, Gwynn R. Dooner ("Dooner"), Dudley E. Williams, Jr. ("Williams"), Susan E. Harper and James S. Harper (the "Harpers"), John A. Ward, Jr. and Lisa G. Ward (the "Wards") individually and on behalf of a class of all persons similarly situated, by their undersigned counsel, for their complaint against GE Capital Auto Lease, Inc. ("GECAL") allege as follows. All allegations made in this complaint are based upon information and belief, except those allegations that

pertain to the named plaintiffs, which are based on personal knowledge.

SUMMARY OF CLAIMS

1. This action challenges certain practices engaged in by GECAL in connection with consumer automobile lease financing. Count I alleges that GECAL violates the Federal Consumer Leasing Act, 15 U.S.C. §§ 1667, *et seq.* ("CLA"), and implementing Federal Reserve Board Regulation M, 12 C.F.R. § 213 ("Regulation M") by imposing excessive, unreasonable default, and early termination charges in its standard lease agreements. Count II alleges that GECAL negligently made or omitted various representations of material fact which results in the imposition of unconscionable charges by GECAL upon early termination of the lease. Count III alleges that GECAL made fraudulent representation and omissions and failed to credit lessees with down-payments and trade-in values toward the capitalized cost of the leased vehicle. Count IV alleges the GECAL violates the Truth-in-Lending Act, 15 U.S.C. §1601, *et seq.*, by failing to make required disclosures on the lease agreement.

2. Plaintiffs bring this action individually and on behalf of subclasses consisting of all persons who a) entered into consumer leases with GECAL or which were assigned to GECAL and provided down-payments or vehicle trade-ins at the inception of the Lease Agreement but were not fully credited with the total amount of such down-payments or vehicle trade-ins in the form of a reduction of the capitalized cost and residual value of the leased vehicle; and b) who entered into consumer automobile leases with GECAL containing early termination penalty provisions which violate the CLA and

terminated such leases prior to the scheduled termination date and were assessed early termination damages on or after July 21, 1995; and c) entered into consumer automobile leases and upon early termination, were charged an additional penalty for excess wear or use of the vehicle even though the reduction in value in the vehicle due to such excess mileage is already factored into the early termination damage calculation, which is based upon the actual value of the vehicle upon early termination.

JURISDICTION AND VENUE

3. This Court has jurisdiction of this action pursuant to 28 U.S.C. § 1331 and the CLA and pursuant to the doctrine of ancillary or supplemental jurisdiction, 28 U.S.C. § 1367(a).

4. Venue is proper pursuant to 28 U.S.C. § 1391 because GECAL conducts substantial business in this district, a substantial part of the events or omissions giving rise to the claims alleged in this complaint occurred in this district, and numerous class members reside in this district.

PARTIES

5. At all times material to this action, plaintiffs were and continue to be natural persons over 18 years of age.

6. At all times material to this action, defendant GECAL has been a Delaware corporation, with its principal place of business at 1300 S. Grove Avenue, Barrington, Illinois, 60010 and doing business personally or through dealers/agents nationwide, including the Middle District of Florida.

7. GECAL, acting on its own or through dealers/agents has entered into many lease agreements with natural persons who lease vehicles for personal, family, or household purposes. On information and belief, the intended term of most or all of these vehicle leases exceeds four months. In almost all cases, the total contractual obligation under the relevant lease is less than $25,000.00.

CLASS ACTION ALLEGATIONS

8. Plaintiffs bring this action pursuant to Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, as the representative plaintiffs and on behalf of the subclasses described above composed of all natural persons who leased vehicles from GECAL in the United States and who have been damaged in one or more of the following respects:

a. they have entered into a Lease Agreement containing a delinquency, default, or early termination provision which was in violation of 15 U.S.C. § 1667(b); or

b. they have terminated the Lease Agreement prior to the stated termination date, and have been assessed unreasonable and excessive early termination damages and penalties as hereinafter described;

c. they have not been credited with down-payments and trade-in values toward the capitalized cost and residual cost of the leased vehicle at the inception of the lease agreement;

d. they have been "double assessed" for excess mileage penalties upon early termination because when

GECAL disposes of a vehicle upon early termination, the value it receives for such vehicle is reduced by actual depreciation, including depreciation related to excess mileage;

e. they have been assessed arbitrary penalties in the form of between four and six months' lease payments upon early termination; and

f. the class period is the fullest allowable under the applicable statutes of limitations.

9. The Class is believed to number in the tens of thousands. Accordingly, members of the Class are so numerous that joinder is impracticable.

10. This action involves questions of law and fact common to those of the members of the Class. Such questions include, but are not limited to:

a. Are the early termination and default penalties imposed by GECAL unreasonable and excessive and in violation of the CLA and Regulation M promulgated thereunder, as well as state law?

b. Do GECAL's disclosures in the Lease Agreement comply with the requirements of the CLA?

c. Does the Lease Agreement violate the common law and statutory law of Florida and other states in which members of the Class reside as a result of the GECAL's negligent misrepresentations or negligent omission of representations which results in the concealment from

plaintiffs and members of the Class of GE's imposition of unconscionable charges upon early termination of the lease?

d. Does GECAL violate the law of the State of Florida and the law of the other states where GECAL operates its leasing business, by permitting a uniform and fraudulent practice of failing to credit down-payments and trade-in values toward the capitalized cost and residual value of leased automobiles?

11. Plaintiffs' claims are typical of the claims of the class they represent, and plaintiffs can fairly and adequately protect and represent the interests of each member of the Class. Plaintiffs have no conflict with the Class that may be designated, have interests completely in accord with the interests of the Class, and have retained experienced class counsel to represent them.

12. GECAL has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the Class as a whole.

13. The questions of law or fact common to plaintiffs' claims and the claims of each member of the Class predominate over any question of law or fact affecting only individual members of the Class, and class representation is superior to other available methods for the fair and efficient adjudication of the controversy.

14. There is no plain, speedy or adequate remedy for each class member other than by maintenance of this representative

action because damage to each class member is relatively small, making it economically unfeasible for class members to pursue remedies individually. The prosecution of separate actions by the individual class members, even if possible, would lead to duplicative discovery, pleadings, motions, and potentially inconsistent or varying adjudications with respect to individual class members against GECAL, and would establish incompatible standards of conduct for GECAL.

WHEREFORE, Plaintiffs pray that this Court enter an order:

a. Certifying that the action may be maintained as a class action;

b. Certifying plaintiffs as class representatives and the undersigned as class counsel;

c. Awarding plaintiffs and all class members the relief prayed for in each of the counts of this Complaint as hereinafter follow.

THE LEASE AGREEMENT

15. The standard form for the lease agreement prepared by GECAL requires lessees to make monthly payments in an amount exclusive of taxes, based upon an inflated value assigned to the vehicle by GECAL at the initiation of the lease (the "Capitalized Cost"). GECAL computes the monthly payments under the lease, which include the following components:

a. The first component represents interest or finance charges.

b. The second component consists of a "depreciation charge" calculated by GECAL based upon the Manufacturer's Suggested Retail Price for the vehicle. The Capitalized Cost, the finance charge, and the depreciation charge were not disclosed to plaintiffs and the members of the Class.

16. The manufacturer of the vehicle regularly establishes and promulgates a Manufacturer's Suggested Retail Price ("MSRP") for each of its models and types of vehicles which is sold and leased to the public. Usually, vehicles are sold by dealerships for amounts equal to or less than the MSRP promulgated for such vehicles.

17. GECAL and its agents do not disclose to lessees, including plaintiffs and the Class, the MSRP for vehicles which are leased.

18. GECAL and its agents have had a practice of establishing Capitalized Costs for leased vehicles in amounts which are substantially in excess of the MSRP for such vehicles. Because GECAL and its agents fail to disclose the Capitalized Costs to lessees, including plaintiffs and the Class, they are impeded from negotiating such Capitalized Costs.

19. The end of term wholesale value of vehicle, set forth in GECAL's standard lease agreement at paragraph 2B, is equal to the Capitalized Cost of the vehicle less GECAL's "depreciation charge" for the term of the lease.

20. As a result of employing excessively high Capitalized Costs, GECAL also imposes lease end values which are higher than the reasonably estimated lease end or residual values for

such vehicles. GECAL intentionally overstates the end of term wholesale value of vehicle for which it was a Lessor under the CLA.

UNREASONABLE DAMAGES FOR EARLY TERMINATION

21. The penalties or other damages for delinquency, default, or early termination set forth in the Lease Agreement are not reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination or the difficulties of proof of loss or the inconvenience of nonfeasibility of otherwise obtaining an adequate remedy, and, therefore, are in violation of 15 U.S.C. §1667(b).

22. GECAL's methodology for computing delinquency, default, and early termination charges do not constitute a proper liquidated damage clause, as such clauses are only appropriate when damages upon default cannot be accurately or easily determined. Here, such damages can be accurately and easily determined so that a liquidated damage clause is unconscionable and unenforceable.

23. In relevant part, GECAL's methodology for determining such damages requires the lessee, including plaintiffs and the Class, to pay the following:

a. a "disposition fee"; plus

b. a penalty of up to six months of base monthly payments; plus

c. the amount by which the capitalized cost of the vehicle, less depreciation paid to date, exceeds the realized value of the leased vehicle upon sale; plus

d. excess mileage penalties.

24. This formula results in lessees paying the full Capitalized Cost (i.e., the sum of the end of term wholesale value plus depreciation charged under the lease) of the leased vehicle, even though this Capitalized Cost is substantially in excess of the fair market value of the vehicle at the inception of the lease.

25. The foregoing formula constitutes a liquidated damage clause which is unenforceable because: (a) it is a penalty imposing damages substantially in excess of the actual damages suffered by GECAL, and (b) the actual economic damages incurred by GECAL upon deficiency, default, or early termination are specifically calculable.

26. The actual damages incurred can be specifically calculated as follows:

a. the average actual price for which the leased vehicle, at time of entering the lease, was sold by the relevant dealer, less any down-payments or trade-in credits; minus

b. the actual resale value, at the time of termination, or the then appraised value, if elected by the lessee; minus

c. depreciation paid to date multiplied by the internal interest rate applied under the lease during the period that payments, pursuant to the lease, were made to GECAL.

27. The formula set forth in the preceding paragraph, if it results in a positive number, provides GECAL with its actual incurred loss at the time of termination by compensating for any *actual market loss* in the value of the vehicle in excess of the current value of depreciation paid the lessee. Any damages in excess of this formula amount are an unreasonable penalty and windfall to GECAL and violate the CLA.

28. The formula employed by GECAL results in early termination damages substantially in excess of the actual early termination damages incurred because: (i) GECAL's formula holds the lessee liable for artificially inflated lease end values which it misrepresents in the lease; (ii) bases damages upon an undisclosed inflated Capitalized Cost; and (iii) charges an arbitrary penalty of up to six months lease payments. Defendant should be required to account to Plaintiffs and Class Plaintiffs for all sums wrongfully or illegally collected or charged.

PLAINTIFFS' TRANSACTIONS WITH GECAL

29. On or about November 23, 1993, Dooner entered into a lease agreement with a Jacksonville, Florida-based dealer known as Coggin Nissan, pursuant to which plaintiff leased a 1994 Nissan Altima ES bearing Vehicle Identification Number 1N4BU31D4RC135435, for a period of sixty months. The Lease Agreement required Dooner to make monthly payments of $377.02. The lease agreement was on a GECAL standard form, and consistent with GECAL's standard operating procedure, was contemporaneously assigned to GECAL. On July 5, 1995, Dooner terminated the lease agreement and was assessed early termination charges in the amount of $10,458.52. A copy of Dooner's lease agreement is annexed hereto as Exhibit A.

Appendix K

30. On or about July 11, 1994, Williams entered into a lease agreement with Coggin Nissan, pursuant to which he leased a 1994 Nissan bearing Vehicle Identification Number 1N6SD11Y6RC397620 for a period of sixty months, beginning on July 11, 1994. The Lease Agreement required Williams to make monthly payments of $263.51 to GECAL. Payments under the lease total $16,249.10. The Lease Agreement was a GECAL standard form, and consistent with GECAL's standard operating procedure, was contemporaneously assigned to GECAL. On December 19, 1995, Williams terminated the Lease Agreement and was assessed early termination charges in the amount of $1,237.15. A copy of Williams' lease agreement is annexed hereto as Exhibit B.

31. On or about June 8, 1993, the Harpers entered into a lease agreement with a Seekonk, Massachusetts-based dealer known as Saturn of Seekonk, pursuant to which they leased 1993 Saturn bearing Identification Number 1G8ZG1577PZ292745, for a period of sixty months. The lease agreement required the Harpers to make monthly payments of $269.24 to GECAL. The lease agreement was a standard GECAL form, and consistent with GECAL's standard operating procedure, was contemporaneously assigned to GECAL. On January 20, 1996, while residing in Jacksonville, Florida, the Harpers terminated the lease agreement and were assessed early termination charges of 1,282.10. A copy of the Harpers' lease agreement is annexed hereto as Exhibit C.

32. On or about January 25, 1995, the Wards entered into a lease agreement with a Jacksonville, Florida-based dealer known as Steve Lucas Honda, pursuant to which they leased a 1995 Honda Accord Wagon bearing Identification Number 1HGC18288AO02331, for a period of sixty months. At the

signing of the lease, the Wards made a down-payment of $1,000.00 on their American Express card and negotiated a trade-in value on their 1993 Honda Civic. The lease agreement did not credit the Wards with either the down-payment or the trade-in value. The lease agreement required the Wards to make monthly payments of $413.40 to GECAL. The lease agreement was on a standard GECAL form, and consistent with GECAL's standard operating procedure, was contemporaneously assigned to GE. On March 12, 1996, the Wards terminated the lease agreement and were assessed early termination charges of $9,728.20. A copy of the Wards' lease agreement is annexed hereto as Exhibit D.

33. GECAL is both an assignee and an original lessor in the transaction with plaintiffs, as contemplated by the Federal Reserve Board in its official staff commentary to Regulation M at Part 213.2(a)(8)1, in that, on the information and belief, GECAL supplied copies of the Lease Agreement to Coggin Nissan, Steve Lucas Honda, Saturn of Seekonk and other dealers; GECAL extended the credit in each lease; each of the leases was contingent upon approval of the lessee's credit by GECAL; and, as set forth in the Lease Agreement, the acceptance of the contract and the assignment to GECAL became operational simultaneously.

34. At the time plaintiffs executed their Lease Agreements, they were directed to make all monthly payments to GECAL.

35. The Federal Truth-in-Lending Act, 15 U.S.C. § 1601, *et seq.*, provides that a creditor violates the act by failing to disclose in the Lease Agreement: (1) the amount financed; (2) the amount of any down-payment made; and (3) the finance charge expressed as an "annual percentage rate" and other information specifically required by 15 U.S.C. § 1638(a).

36. GECAL is a creditor within the meaning of the Truth-in-Lending Act ("TILA") when it acts as a lessor and violates TILA by failing to disclose in the Lease Agreement an accurate statement of the amount of credit extended under the Lease Agreement and the finance charge, including the annual percentage rate, down-payments, and trade-in values made by lessees as well as other disclosures required pursuant to 1513 U.S.C. § 1638(a).

COUNT I

(For Violation of the Consumer Leasing Act, 15 U.S.C. Sections 1667, *et seq.*)

37. Plaintiffs reallege paragraphs 1 through 36, as if fully set forth herein.

38. The CLA and Regulation M require extensive disclosures in consumer lease transactions and require disclosure of certain substantive terms of such transactions.

39. The CLA and Regulation M apply to any "consumer lease". As defined by 15 U.S.C. § 1667(1), a "consumer lease" is a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000.00, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease. . . ."

40. The CLA and Regulation M are applicable to GE's Lease Agreement because:

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a. GECAL is a "lessor" as contemplated by Regulation M at 213.2(a)(8). GECAL is regularly engaged in the business of leasing vehicles to natural persons for a period of time exceeding four months and for a total contractual obligations not exceeding $25,000.00.

b. Plaintiffs leased the subject vehicles from GECAL for personal, family, and household purposes, as was acknowledged by checking the box in the Lease Agreement indicating the lease was for a personal, family, or household use (see Exhibits B, C, D and E).

c. The Lease Agreement is a "contract in the form of a lease for . . . the use of personal property by a natural person". 15 U.S.C. § 1667(1). Plaintiffs are natural persons.

d. Plaintiffs' total contractual obligation, including lease payments, security deposit, acquisition fee, sales tax, fees, and licenses, does not exceed $25,000.00.

e. Plaintiffs' lease agreements are for a period in excess of four months.

41. The CLA provides for substantial regulation of charges for early termination, delinquency, and default:

> Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination, difficulties of proof of loss, and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy. 15 U.S.C. § 1667(b).

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42. Paragraph 18 of the Lease Agreement sets forth the terms in the event a lessor terminates the lease prior to scheduled termination. Paragraph 18 provides in relevant part:

> 18. EARLY TERMINATION. If I am not in default, I have the right at any time upon thirty (30) days' prior written notice to terminate this Lease Agreement by payment of the sum of the following amounts:
>
> (i) a Disposition Fee of $250;
>
> (ii) any monthly payments currently due and unpaid or other amounts or charges arising from my failure to keep my promises under this Lease Agreement, including without limitation the amount you must spend to put the Vehicle in good operating order and appearance as required by Item 1(F);
>
> (iii) where the Balance Subject to Lease Charge, as defined in Item 1(D), less depreciation taken to date as described in Item 1(D), is greater than Vehicle's Realized Value, as defined below, the difference by which is greater;
>
> (iv) an early termination charge equal to the number of Total Base Monthly Payments, Item 2C, shown in the chart below, which is based upon the percentage of months in the Lease Term which have expired (this percentage is calculated by dividing the number of months expired in the Lease Term by the total number of months in the Lease Term).

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% of Months in Lease Term Expired	Number of Total Base Monthly Payments Due
0-25%	6
26-50%	5
51-75%	4
76-99%	Lesser of 3 or the number of remaining months

(v) any official fees and taxes imposed in connection with termination of this Lease Agreement.

My early termination liability, if I do not purchase the Vehicle, will be affected by the Realized Value of the Vehicle. The Realized Value may be determined in one of the following ways: (i) by a written agreement between you and me if it is signed 10 days prior to the date of early termination; (ii) by a professional appraisal obtained at my expense of the wholesale value of the Vehicle 10 days prior to the date of early termination if you and I can each agree to my selection of an independent third party qualified to make the appraisal); (iii) if the Realized Value is not determined by the date of early termination you will determine Realized Value in a commercially reasonable manner determined by you in accordance with accepted practices in the automobile industry for determining the value of used vehicles; or (iv) if the Vehicle has been stolen or destroyed, the Realized Value will be the amount of any proceeds of the insurance coverage maintained by me for the Vehicle . .

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I understand that the Realized Value amount will be reduced by the expenses of sale and any other official or other fees and taxes you must pay upon Vehicle disposition.

43. The above provision for damages for delinquency, default, and early termination is not reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination or the difficulties of proof of loss or the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy and, therefore, violates 15 U.S.C. § 1667(b).

44. Plaintiffs and the Class have been injured as a result of the violation of the CLA as aforesaid.

45. The delinquency, default, and early termination provision is also unenforceable as a liquidated damages clause in that a liquidated damages clause is not permissible when actual damage upon default can be accurately determined.

46. Plaintiffs and all similarly-situated lessees are unclear as to their rights and obligations under the early termination provision of the Lease Agreement, and seek a declaration that the provision violates 15 U.S.C. § 1667(b).

WHEREFORE, Plaintiffs demand judgment:

(a) for damages pursuant to 15 U.S.C. § 1667, *et seq.*;

(b) for any and all relief pursuant to 15 U.S.C. § 1667, *et seq.*; and

(c) any other relief deemed just and proper under the circumstance presented.

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COUNT II

(Negligent Misrepresentation)

47. Plaintiffs reallege paragraphs 1 through 36 as if fully set forth herein.

48. GECAL, at the time lessees entered into their lease agreements, negligently made various representations or omitted various representations of material fact for which defendant had a duty to disclose which resulted in the concealment from plaintiffs of GECAL's failure to credit lessees with down-payments and trade-in values and GECAL's use of inflated values for capitalized costs and lease-end or residual values, and resulted in GE's imposition of unconscionable charges upon early termination.

49. At the time plaintiffs and all other similarly situated lessees entered into their lease agreements, they could not have known of the material omissions and concealments regarding the actual terms and conditions of the Lease Agreement they entered into as set forth herein, and instead relied on the representations and omissions of GECAL.

50. The representations and omissions of material information concerning the actual terms and conditions of the Lease Agreement had the effect of deceiving plaintiffs and the Class, and GECAL knew or should have known that its representations and omissions were false and misleading.

51. Plaintiffs and the Class acted in reliance upon the direct and indirect misstatements and omissions of GECAL and its agents, and, as a result, suffered injury.

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52. Plaintiffs and the Class did not and could not, through the use of due diligence, have discovered or learned of the misrepresentations and omissions of GECAL.

WHEREFORE, Plaintiffs demand judgment against defendant for damages, costs, prejudgment interest and such other relief appropriate under the circumstances presented.

COUNT III

(Fraud)

53. Plaintiffs reallege paragraphs 1 through 36 and 48 through 52, as if fully set forth below.

54. GECAL engaged and continues to engage in an ongoing scheme to conceal from plaintiffs and the Class by: (i) its failure to credit Lessees with down-payments and trade-in values; and (ii) its practice of charging unconscionable charges upon early termination.

55. At the time plaintiffs and all other similarly situated Lessees entered into their lease agreements, they did not have an opportunity to learn of the material omissions and concealment regarding the schemes outlined herein.

56. The concealment of material information concerning the schemes outlined herein was made with the intent to intentionally deceive plaintiffs and the Class.

57. Plaintiffs and the Class acted in reliance upon the direct and indirect misstatements and omissions of GECAL and its agents, and, as a result, suffered injury.

58. Plaintiffs and the Class did not and could not, through the use of due diligence, have discovered or learned of the fraudulent practices engaged in by GECAL until shortly before the date of this complaint.

WHEREFORE, plaintiffs demand judgment against defendant for damages, costs, prejudgment interest and such other relief appropriate under the circumstances presented.

COUNT IV

(Violation of the Federal Truth-In-Lending Act, 15 U.S.C. 1601, *et seq.*)

59. Plaintiffs reallege paragraphs 1 through 36 as if fully set forth herein.

60. The Lease Agreement is a consumer credit transaction within the meaning of the Truth-in-Lending Act, 15 U.S.C. §1638.

61. The Truth-in-Lending Act and applicable regulations explicitly require a creditor to disclose accurately certain aspects of a consumer credit transaction in a disclosure statement to be given to the consumer at the signing of the transaction. 15 U.S.C. §1631(a); 12 C.F.R. 226.18.

62. The required disclosures include an accurate disclosure of the annual percentage rate for credit extended and the finance charge, and the amount financed or capitalized cost. 15 U.S.C. §1638(a).

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63. GECAL violated the Truth-in-Lending Act by failing to make such disclosures in the Lease Agreement and fraudulently concealed its failure to make such disclosures.

64. Plaintiffs and other similarly situated Lessees who entered into the Lease Agreement suffered damages as a result of GECAL's failure to make correct disclosures and plaintiffs and other similarly situated lessees claim statutory damages pursuant to 15 U.S.C. §1640(a) and actual damages related thereto.

65. Plaintiffs and all similarly situated Lessees did not and could not through the use of due diligence, have discovered GECAL's failure to make proper disclosures until the filing of this complaint.

WHEREFORE, Plaintiffs demand judgment for damages against defendant and all relief provided under 15 U.S.C. § 1640, et seq.

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JURY TRIAL DEMANDED

66. Pursuant to the Federal Rules of Civil Procedure Rule 38, plaintiff demands a trial by jury of all issues so triable.

Respectfully submitted,

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No. 98-1375

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

SUZANNE G. HARPER, *et al.*,
Petitioners,

v.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC.,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether members of a class who received notice of a settlement and did not opt out of the class may nevertheless file a subsequent lawsuit based on the same Consumer Leasing Act claims that were the subject of the settled litigation solely because one of the settled claims could not be fully adjudicated as to every absent class member at the time of the settlement.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, respondent states the following:

General Electric Capital Auto Lease, Inc. ("GECAL"), now known as General Electric Capital Auto Financial Services, Inc., is a subsidiary of General Electric Capital Corporation, which in turn is a subsidiary of General Electric Capital Services, Inc., which is a subsidiary of General Electric Company, and that GECAL has no non-wholly owned subsidiaries.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT

1. This case involves a collateral challenge to a class action settlement covering 600,000 persons who entered into automobile leases that allegedly violated the Consumer Leasing Act, 15 U.S.C. § 1667 *et seq.* The underlying suit was filed in December 1994 in the United States District Court for the Northern District of Illinois against General Electric Capital Auto Lease, Inc. ("GECAL"). The suit alleged, in essence, that GECAL had imposed unreasonable charges without adequate notice to lessees who terminated their leases early or by default in violation of the Consumer Leasing Act, 15 U.S.C. §§ 1667a and 1667b(b); and that GECAL violated the lessees' right, protected by 15 U.S.C. § 1667b(c), to demand an appraisal of the residual value of the automobile being

leased upon early termination. Pet. App. 7a. Similar claims were also asserted under state law. *Id.*

The matter was submitted with the consent of the named plaintiffs and GECAL to a magistrate judge pursuant to 28 U.S.C. § 636(c). The parties reached a settlement in July 1995, and sought certification of the class at the same time the settlement was submitted to the court. The class was defined as all persons who entered into an automobile lease assigned to GECAL between January 1, 1987 and July 21, 1995. The class of 600,000 plaintiffs was provided written notice of the settlement by mail and expressly granted the rights to object to the fairness of the settlement or to opt out of the class or both. Pet. App. 8a. Approximately 1300 members of the class exercised their right to opt out of the class. *Id.*

Under the proposed settlement, GECAL agreed to provide each plaintiff with either a $50 credit against any charges for early termination under the lease or a $100 certificate payable on a new auto lease for plaintiffs who did not terminate early. The settlement released the following claims of the class members:

> The settlement embodied in this Agreement shall apply to all persons in the Class as defined . . . and shall be in . . . final settlement of all claims asserted in the Actions . . . arising out of disclosures made on or in connection with vehicle leases assigned to GECAL, out of the reasonableness or validity of the charges . . . and out of the collection or attempted collection of charges imposed under such lease. . . .

Pet. App. 9a; App. 4a.

The magistrate judge conducted a fairness hearing after which the proposed settlement was approved. One of the objectors at the hearing, Susan A. Reilly, specifically objected on the basis that "[s]he would like to terminate her

lease but the charges are excessive" and she believed that $50 was not adequate. Pet. App. 44a. Although the court rejected this argument as a basis for upsetting the entire settlement, Ms. Reilly remained free to opt out of the class. *Id.* at 43a.

On January 4, 1996, the magistrate judge entered a final judgment. The court enjoined all " '[c]lass members who did not opt out of the class . . . from commencing, prosecuting, or asserting by way of counterclaim or defense against GECAL any of the claims dismissed, settled or barred pursuant to this order.' " Pet. App. 9a, 58a.

2. Petitioners, five unnamed members of the class in the Illinois litigation, filed a class action lawsuit in the United States District Court for the Middle District of Florida, which is "essentially the same suit" against GECAL that was filed in Illinois. Pet. App. 2a. GECAL moved in the Illinois District Court to enjoin further prosecution of the Florida action because it violated the Illinois court's final judgment. Petitioners argued that the injunction should not issue because, as to one of their claims, they were not properly members of the settlement class. They contended that they had not early-terminated their leases prior to the date the settlement was finalized and thus petitioners could not fully determine the extent of the early termination charges that were imposed upon them.

The magistrate judge enjoined petitioners from pursuing their claims in Florida. Pet. App. 19a-26a. The court noted that each of the petitioners fell "squarely" within the class of plaintiffs bound by the earlier judgment. *Id.* at 24a. Moreover, petitioners clearly had existing justiciable claims concerning the legal adequacy of GECAL's disclosures in its leases. In addition, petitioners "were adequately equipped to make a reasoned decision, based

on the likelihood of early termination and the costs/benefits of a separate legal challenge, regarding the relative merits of participating in the class or opting out." *Id.* at 25a. Accordingly, the magistrate judge concluded that petitioners "should not now be permitted to relitigate settled issues central to" the previous class action. *Id.*

3. The court of appeals unanimously affirmed. Pet. App. 1a-18a. The court of appeals began its analysis of the question presented by petitioners [1] by noting that petitioners fall "squarely within the class certified" in the prior litigation. *Id.* at 12a. Petitioners made no effort to opt out of that litigation, even though it was uncontested that they received notice of the settlement. *Id.*

The court then turned to the issue of whether the question of "ripeness" as to one of petitioners' claims—unreasonableness of early termination charges—rendered their failure to opt out an invalid basis for barring them from relitigating the issues previously resolved in Illinois. The court of appeals found this case fundamentally different from cases relied upon by petitioners [2] primarily on the basis that each of the petitioners had at least one existing justiciable claim at the time of the settlement and

---

[1] The court of appeals initially resolved the questions whether the magistrate judge had Article III jurisdiction to bind absent class members in the prior judgment and whether the court of appeals had jurisdiction to review the magistrate judge's injunction. Pet. App. 2a-7a. The court resolved both issues in favor of jurisdiction and petitioners have not challenged either of those rulings before this Court. *See* Pet. *i*.

[2] *Georgine* v. *Amchem Prods., Inc.*, 83 F.3d 610, 623-24 (3d Cir. 1996), *aff'd sub nom. Amchem Prods., Inc.* v. *Windsor*, 521 U.S. 591 (1997); *In re Asbestos Litig.*, 90 F.3d 963, 1015-26 (5th Cir. 1996) (Smith, J., dissenting), *vacated sub nom. Flanagan* v. *Ahearn*, 117 S. Ct. 2503 (1997); *In re Asbestos Litig.*, 134 F.3d 668, 670-83 (5th Cir.) (Smith, J., dissenting), *cert. granted sub nom. Ortiz* v. *Fibreboard Corp.*, 118 S. Ct. 2339 (1998).

thus some injunctive relief was clearly appropriate. Pet. App. 14a.

The court then held that it was equally "appropriate" for the trial court to have addressed the entire case, including the unreasonable early termination charges, in measuring the proper scope of the injunction. The court found instructive numerous cases upholding the authority of a federal court to resolve by final judgment "not only those claims alleged in the complaint, but also a claim 'based on the identical factual predicate as that underlying the claims in the settled class action even though the claim was not presented and might not have been presentable in the class action.' " Pet. App. 15a, quoting *Class Plaintiffs* v. *City of Seattle*, 955 F.2d 1268, 1287 (9th Cir. 1992), quoting *TBK Partners, Ltd.* v. *Western Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982).

Having decided that the unreasonable early termination charges were properly part of the settlement, the issue became whether petitioners should be enjoined from pursuing those claims in Florida. The panel reasoned that those claims were "based on the identical factual predicate" as in the Illinois litigation and that it was possible that even the exact amount of the potential liability could have been determined because of the statutory damages provision in 15 U.S.C. § 1640(a)(2)(A). But the court concluded that regardless of that it was still reasonable to enforce the judgment embodying the settlement of the related early termination claims along with the other claims in the earlier litigation. Pet. App. 16a.

Turning to petitioners' due process arguments, the court of appeals held that petitioners had waived any argument concerning the adequacy of the class representation in the Illinois litigation because they had failed to raise the point adequately in their briefs in the court of appeals. Pet.

App. 17a. With respect to notice, the court held that petitioners reasonably knew that their disclosure claims were being settled, which put them "on inquiry notice about the entire settlement," including their early termination charge claims. *Id.* at 18a Accordingly, the court of appeals concluded that the lower court was "well within its authority to prohibit [petitioners] from relitigating their claims in another forum." *Id.*

REASONS FOR DENYING THE PETITION

Petitioners attempt, Pet. 9-10, to portray this case as involving some issue akin to a question posed, but not decided, in *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591 (1997); and potentially embedded in *Ortiz* v. *Fibreboard Corp.*, No. 97-1704 (cert. granted, June 22, 1998, argued, Dec. 8, 1998), *viz.*, whether a class action settlement can bind a plaintiff who has no idea that he or she may have any claim against the defendant at the time of the settlement. In reality, the issue posed here is much narrower and arises out of a completely uncommon fact situation. Moreover, there is no assertion by petitioners that the holding below conflicts with holdings of either this Court or of any other court of appeals. This is because the precise issue posed here has never been decided before. Thus, the case inherently poses no issue remotely warranting review by this Court.

1. Lacking even the hint of a conflict among the circuits that might justify certiorari, petitioners struggle mightily to wrap themselves in a settlement class action cloak that is large enough to cover them with the concerns this Court has expressed in *Amchem* and that may arise in *Fibreboard*. But the fears expressed there concerning settlements that would bind parties who are not even born or who have no way of knowing whether they have been exposed to asbestos are not remotely implicated by the settlements here.

In this case, petitioners knew that they had leases with respondent and they knew that early termination of the leases could result in penalties. They were expressly on notice that any rights they might have in that regard were being finally resolved by the Illinois court and were given the opportunity to opt out of the settlement. That the notice was more than adequate to apprise plaintiffs of their situation is revealed by the objections of Susan A. Reilly at the fairness hearing. She had not terminated her lease, but was concerned that the settlement would impair her interests. While her objection did not undermine the fairness of the settlement, it demonstrates plainly that an ordinary person in circumstances identical to petitioners would recognize precisely how the settlement would affect his or her rights in the event of a future termination of the lease. At a minimum, any suggestion that the action below denied petitioners due process on a theory of failure to provide adequate notice is without substance. Moreover, the issue as posed in the circumstances presented in this case where there are multiple claims available to the same plaintiff—all of which are ripe as to the class representative but some of which may not be completely ripe as to absent class members—is extremely unlikely to recur, which makes this case even more inappropriate for plenary review by this Court.

Petitioners' due process argument is further undermined by their failure properly to preserve the adequacy of the class representation as a due process argument on appeal to the Seventh Circuit. See Pet. App. 17a. Thus, given the effectiveness of notice as a matter of due process, petitioners' only real argument is that their interests were inadequately represented in the Illinois proceeding in a manner that undermined fundamental fairness. Whatever the merits of that argument in a different setting, the issue clearly is unworthy of certiorari given the court of appeals'

holding that petitioners procedurally defaulted on preserving that issue. Certainly, the waiver holding is purely fact bound and is, in any event, not challenged in the petition.

2. Petitioners' primary argument, Pet. 11-17, is that a court can never incorporate into a settlement elements of a dispute arising out of a common nucleus of operative facts that might not have been fully justiciable as to every class member at the time the settlement was reduced to judgment. But the law is quite clear that courts are fully competent to approve a release of related claims as part of a global settlement among parties, even if some of those claims on their own would not be within the jurisdiction of the court approving the settlement. See, *e.g.*, *Matsushita Elec. Indus. Co.* v. *Epstein*, 516 U.S. 367, 387 (1996); *Grimes* v. *Vitalink Communications Corp.*, 17 F.3d 1553, 1563-64 (3d Cir. 1994); *Class Plaintiffs* v. *City of Seattle*, 955 F.2d 1268, 1287 (9th Cir. 1992); *Nottingham Partners* v. *Trans-Lux Corp.*, 925 F.2d 29, 34 (1st Cir. 1991); *TBK Partners, Ltd.* v. *Western Union Corp.*, 675 F.2d 456, 460 (2d Cir. 1982).

Indeed, petitioners do not cite a single case for the proposition that Article III jurisdiction must lie as to each absent class member for all claims that are settled by a court. Instead, they attempt to distinguish the myriad cases that stand for the opposite proposition, but arise in fact situations that are not precisely the same as in this case. But, the fundamental point with respect to certiorari is that all of those cases provide a sound conceptual basis for the holding below and petitioners offer neither case support nor logic as to why the ministerial application of those principles to this case is worthy of this Court's attention.

Indeed, the core principle that in a settlement, courts may release claims that they would lack jurisdiction to try

comes from this Court's recent decision in *Matsushita Electric Industrial Co.* v. *Epstein*, 516 U.S. 367, 387 (1996). Petitioners' nominal distinction, Pet. 19, that the claims here, in part, were future claims is true, but it misses the point. The issue does not turn on notions of "jurisdiction." Instead, the proper resolution of these cases turns on due process and, as discussed above, petitioners had adequate notice to satisfy due process and they have waived inadequate representation as a due process issue. In sum, there is no reason for the Court to entertain petitioners' patently overbroad assertion that federal courts lack authority to approve settlements that include matters that may technically lay outside their jurisdiction when they are included as part of a global solution to matters that unquestionably lie within the court's Article III jurisdiction.[3]

3. Petitioners' final contention, Pet. 14-17, need not detain the Court long. They argue that the decision below is inconsistent with this Court's decision in *Lewis* v. *Casey*, 518 U.S. 343 (1995) Nothing could be further from the truth. *Lewis* involved a garden variety effort by a plaintiff with standing to raise one claim to adjudicate—over the defendant's vigorous and successful objection—other claims for which that plaintiff lacked standing. 518 U.S. at 348-49. Accordingly, in *Lewis* this Court merely applied its traditional standing requirements and refused to

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[3] Of course, the argument here is particularly strained because it is far from clear that the Illinois court could not adjudicate the unreasonable early termination charges in this case. Those claims were clearly ripe as to the class representatives. Further, as the court of appeals held, Pet. 16a, it is likely that petitioners could have calculated their damages with reasonable certainty, which is the only basis for petitioners' assertion that these claims were non-justiciable. Assuming the issue could ever be worthy of certiorari, the Court should await a case where the settled claims are unquestionably non-justiciable before entertaining the issue petitioners present.

resolve any claims for whch plaintiffs had suffered no injury in fact. *Id.* at 349-53. Thus, *Lewis* provides no insight into whether parties can settle multiple claims if one of the claims may not be technically ripe for adjudication as to certain absent class members.[4]

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

CARTER G. PHILLIPS *
DAVID B. JOHNSON
SIDLEY & AUSTIN
1722 Eye Street, N.W.
Washington, D.C. 20006
(202) 736-8000
Counsel for Respondent

* Counsel of Record

March 26, 1999

[4] *City of Los Angeles* v. *Lyons*, 461 U.S. 95 (1983), is equally unavailing. That case also involves a successful challenge by the defendant to the plaintiffs' standing to seek particular relief. *Lyons*, 461 U.S. at 105-10. Again, it says nothing about the scope of a court's authority to settle multiple claims.

APPENDIX

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 94 C 7410
Magistrate Judge Joan H. Lefkow

STACEY WILLIAMS, *et al.*,
Plaintiffs,

v.

GENERAL ELECTRIC CAPITAL AUTO LEASE, INC., *et al.*,
Defendants.

NOTICE OF PENDENCY OF CLASS ACTION,
AND NOTICE OF PROPOSED SETTLEMENT
AND HEARING THEREON

This Notice is not a notification that you have been sued. It is a notification that you may be a member of a plaintiff class in a lawsuit brought against General Electric Capital Auto Lease, Inc. on behalf of that class.

To: All persons in the United States other than residents of Connecticut who, on or after January 1, 1987, entered into an automobile lease assigned to General Electric Capital Auto Lease, Inc. ("GECAL") and written on a lease form prepared by GECAL which bears one of the following identification numbers:

410	494	626	711	715
420	610	628	712	717
430	620	630	713	718
498	624	710	714	724

If you meet all the criteria contained in the class definition set forth below, you are a member of the class on whose behalf certain claims are being asserted in the above-captioned civil action now pending in the United States District Court for the Northern District of Illinois. The purpose of this notice is to advise you of a proposed settlement of those claims and of a hearing to consider the settlement to be held on November 29, 1995, at 10:00 a.m. before Magistrate Judge Joan Lefkow, Dirksen Federal Building, 219 S. Dearborn, Chicago, IL 60602. PLEASE READ THIS NOTICE CAREFULLY. IT MAY AFFECT YOUR RIGHTS.

This Notice does not affect your payments on your current lease from General Electric Capital Auto Lease, Inc. You must continue to make the payments required in your lease.

I. *DESCRIPTION OF THE LITIGATION*

This lawsuit is pending in the United States District Court for the Northern District of Illinois. It is one of a number of class actions that have been brought against automobile lessors regarding the early termination provisions of their leases. In this suit, plaintiffs assert that the early termination and default provisions in these leases violate the federal Truth In Leasing Act and state law in that they fail to make adequate disclosures and provide for unreasonable early termination charges.

Plaintiffs' counsel have conducted a thorough study and investigation of the law and the facts relating to the claims asserted in this lawsuit and have concluded that, taking into account the benefits that the Class will receive as a result of this settlement and the risks and delays of further litigation, the settlement provided herein is fair and reasonable and in the best interests of plaintiffs and members of the Class.

Defendant GECAL denies all allegations of wrongdoing and liability asserted in this lawsuit and maintains that it conducted its dealings with plaintiffs and members of the Class in a lawful manner in all respects and in conformity with the federal Truth in Leasing Act and state law.

This Notice should not be understood as an expression of any opinion by the Court as to the merits of any of the claims asserted by the plaintiffs or any defenses asserted by GECAL.

II. *THE PROPOSED CLASS AND YOUR RIGHT TO BE EXCLUDED*

For the purposes of settlement only, the Court has provisionally defined and certified a class ("Class") consisting of all persons in the United States other than residents of Connecticut who, on or after January 1, 1987, entered into an automobile lease assigned to General Electric Capital Auto Lease, Inc. ("GECAL") and written on a lease form prepared by GECAL which bears one of the identification numbers identified above.

The Court has certified as Class representatives plaintiffs Stacey Williams, Staci Beasley, Peter Richard, Gary Blank, Salvatore Carone, and James Georgias, and has certified as counsel for the Class ("Class Counsel") the following attorneys:

Daniel A. Edelman
EDELMAN & COMBS
Suite 2040
135 S. LaSalle Street
Chicago, IL 60603

Lawrence Walner
Lawrence Walner &
Associates Ltd.
150 N. Wacker Drive
Suite 1870
Chicago, IL 60606

If you fall within the above Class definition, you will be a member of the Class unless you exclude yourself

from the Class. You do not need to take any action in order to remain in the Class. Those who do not file a notice of exclusion are automatically members of the Class.

Being a member of the Class means that if the settlement is approved by final judgment, you will have the right to participate in the settlement and be entitled to the benefits described in this Notice. If the settlement is approved, all Class members will be precluded from further litigation of any claims that they may have against General Electric Capital Auto Lease, Inc. ("GECAL") and its assignors (i.e., the dealers or other lessors who originally wrote the leases) arising out of disclosures made on or in connection with vehicle leases assigned to GECAL, out of the reasonableness or validity of the charges and other terms contained in such lease forms, and out of the collection or attempted collection of charges under such lease forms, except as provided in part III.6 below.

You should be aware that the federal Truth In Leasing Act permits lessees to bring individual actions against their lessors, and that if the lessees prevail in such actions, they might be entitled to receive reasonable attorneys' fees and up to $1,000 in statutory damages, plus any actual damages. If the proposed settlement is approved members of the Class will be precluded from bringing such claims with respect to the lease transactions involved in this case. There can be no assurance, however, that such individual actions with respect to the claims in this case would be successful.

If you do not wish to be a member of the Class, you may exclude yourself from the Class by mailing a notice of exclusion to one of the Class Counsel, at the above addresses, postmarked not later than November 1, 1995.

The notice should state your name, address, and lease account number. If you choose to exclude yourself from the Class, any claims that you might have against General Electric Capital Auto Lease, Inc. will not be affected by this lawsuit. However, if you exclude yourself, you will not be able to participate in any of the benefits of the settlement.

III. *THE PROPOSED SETTLEMENT*

Plaintiff and General Electric Capital Auto Lease, Inc. have entered into a settlement agreement which has been preliminarily approved by the Court and which will be considered for final approval at the hearing on November 29, 1995, which you have a right to attend. The principal terms of the proposed settlement, which will become effective if the settlement is finally approved by the court, are as follows:

1. All Class members whose leases with GECAL are outstanding as of July 21, 1995, or whose leases with GECAL have terminated as of such date prior to the scheduled termination date, and who submit a valid Proof of Claim will receive, depending upon their election in such Proof of Claim, *either* (i) a certificate which may be applied in the maximum of $50 (as provided in paragraph 3 below) to early termination charges under such leases when all other such charges are paid in full ("Early Termination Certificate"), *or* (ii) a certificate which may be applied in the maximum amount of $100 (as provided in paragraph 3 below) to payments (other than initial payments or deposits due at lease signing) on a new automobile lease assigned to GECAL ("New Lease Certificate").

2. All Class members whose leases with GECAL have terminated as of July 21, 1995, on or after the scheduled

termination date and who submit a valid Proof of Claim will receive a New Lease Certificate.

3. The amount of each Early Termination Certificate will be the lesser of $50 or the amount obtained by dividing $2.5 million by the number of valid Proofs of Claim requesting such Certificates. The amount of each New Lease Certificate will be the lesser of $100 or the amount obtained by dividing $10 million by the number of valid proofs of Claim requesting such Certificates. The amounts of each Certificate may also be further adjusted to pay attorneys' fees and expenses as described below, if approved by the Court. Such adjustments shall be made so that each type is of an equal whole dollar amount.

4. Only one Certificate will be issued for each lease qualifying a person or persons to be Class members, but persons who entered into more than one such lease may receive one Certificate for each lease. Certificates will be distributed within 90 days after the settlement becomes effective and will be valid for a period of eighteen months after the date they are issued. A Certificate may be used only by a Class member to whom it is issued. Only one Certificate may be used per lease.

5. GECAL shall pay attorneys' fees and expenses of Class Counsel in this action in such amount as may be approved by the Court not to exceed $600,000, and the six class representatives will each receive $1,000 and will be released from certain early termination charges under their leases. Class Counsel may, subject to approval by the Court, request additional fees from members of the Class payable only (i) from cash amounts otherwise payable by GECAL to Class members upon actual redemption of Early Termination Certificates with respect to early termination charges previously paid in full, or (ii) from amounts otherwise to be applied by GECAL to Class

members' new lease payments upon actual use of New Lease Certificates.

6. All claims of Class members who do not request exclusion shall be dismissed with prejudice, causing them to be fully released, whether or not they submit a timely Proof of Claim, as described in Part II above. This dismissal shall not apply to (i) claims against assignors of GECAL, based upon representations other than the written terms of the lease, and (ii) claims based upon vehicle defects, property damage, personal injury or death, repossession or recovery of the leased vehicle, application of security deposits, or collection practices other than collection or attempted collection of amounts specified in the lease. The settlement will not affect other rights and obligations of Class members and GECAL under their leases.

7. Nothing in this settlement will give any Class member the automatic right to a new lease from General Electric Capital Auto Lease, Inc. Applications on behalf of Class members for a new lease will be subject to GECAL's ordinary standards as to creditworthiness and eligibility. GECAL reserves the right to reject any application if any of such standards and requirements are not fully satisfied, and to change such standards, or to discontinue leasing automobiles, in its sole and unlimited discretion.

The foregoing description of the proposed settlement is a summary only. The complete settlement agreement is available for inspection in the court file in the above-captioned proceeding.

IV. *DISTRIBUTION OF SETTLEMENT CERTIFICATES*

Settlement certificates will be mailed within 90 days after the settlement is approved by the court and becomes

effective and will be valid for a period of eighteen months after the date they are issued. Class members eligible to receive certificates must submit a Proof of Claim in accordance with the form attached to this Notice.

V. *WHAT THE SETTLEMENT MEANS*

The proposed settlement is intended to settle all claims and causes of action that have been or could have been alleged by any Class member with respect to the lease(s) on which Class membership is based, whether known or unknown, including but not limited to claims under federal or state law, against General Electric Capital Auto Lease, Inc, and its assignors, as described above in parts II and III.6. If you do not exclude yourself from the Class and the settlement is approved and becomes final, you will release all such claims. The release will extend to General Electric Capital Auto Lease, Inc., its past or present officers, directors, agents, employees, parents, affiliates, subsidiaries and divisions, to all successors, assigns or legal representatives of any of the foregoing, and to their assigns. **If you do not exclude yourself from the Class and the settlement is approved and becomes final, you will be deemed to have entered into this release whether or not you receive a settlement certificate or file a Proof of Claim.**

If the settlement is approved by the Court and the approval becomes final, the settlement will be consummated. If the settlement is not approved by the Court or does not become final for any other reason, the litigation will continue.

VI. *HEARING ON THE SETTLEMENT*

The Court will hold a hearing in Courtroom 1982 of the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, IL 60602 on November 29, 1995, at 10:00 a.m.

to determine whether the proposed settlement should be approved as fair, adequate, and reasonable and to determine the amount of attorneys' fees, and litigation costs and expenses that should be awarded to Class Counsel. The hearing may be continued without further notice. It is not necessary for you to appear at the hearing.

Any member of the Class who has not elected to be excluded from the Class may object to approval of the proposed settlement or to the application for attorneys' fees and reimbursement of litigation costs and expenses, and may appear at the hearing, individually or through the Class member's own counsel, but only if such Class member has submitted a written objection and notice of intention to appear. Any objections must be in writing and must be filed with the Clerk of the United States District Court for the Northern District of Illinois, Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois 60602 not later than November 1, 1995. Any objections shall state each specific reason, if any, in support of the objection, and any legal authority for such objection shall be cited. Such objections and any supporting papers shall also be mailed or delivered no later than the date of filing to Class Counsel at the following address:

Daniel A. Edelman
EDELMAN & COMBS
Suite 2040
135 S. LaSalle Street
Chicago, IL 60603

VII. *ADDITIONAL INFORMATION*

The pleadings and other records in this litigation, including copies of the Settlement Agreement, and Class Counsels' application for attorneys' fees and reimburse-

ment of litigation costs and expenses, may be examined any time during regular office hours at the office of the Clerk of the Court. If you need additional information, you should write to Class Counsel at the addresses set forth above, or telephone them at 1-800-222-9659.

PLEASE DO NOT CONTACT THE COURT OR THE CLERK OR GECAL

/s/ _____

THE HONORABLE JOAN H. LEFKOW

Dated: September 28, 1995

PROOF OF CLAIM

The undersigned hereby submits this Proof of Claim pursuant to and subject to the terms of the Settlement Agreement and Notice of Proposed Class Settlement in the action presently pending in the U.S. District Court for the Northern District of Illinois entitled *Stacey A. Williams, et al. v. General Electric Capital Auto Lease, Inc., et al.*, No. 94 C 7410.

INSTRUCTIONS

1. To file a Proof of Claim, you must have entered into an automobile lease on or after January 1, 1987 assigned to General Electric Capital Auto Lease, Inc. ("GECAL") and written on a lease form prepared by GECAL which bears one of the following identification numbers:

410	494	626	711	715
420	610	628	712	717
430	620	630	713	718
498	624	710	714	724

2. You must furnish all of the information required from you on this form.

3. Your Proof of Claim must be mailed (postmarked) not later than November 28, 1995, postage prepaid, addressed to:

   GE Capital Auto Lease Litigation
   c/o Analytics, Incorporated
   P.O. Box 455
   Excelsior, MN 55331

4. If you entered into two or more leases, you should file a separate Proof of Claim for each. In order to file separate Proofs of Claim for two or more leases, you

should make sufficient copies of this form to enable you to file a separate Proof of Claim for each lease before filling out this form.

Please provide the following information (please print or type):

A. Name: _____

B. Address: _____

C. Date of your lease: _____

D. The date your lease terminated (or, if not terminated, is scheduled to terminate) is: _____.

Please check which of the following circumstances applies to you and indicate which certificate you would like sent to you.

☐ My lease with GECAL (a) has not terminated and remains outstanding, or (b) terminated prior to the scheduled termination date and I incurred early termination charges. Please send me:

  ☐ an Early Termination Certificate in the maximum amount of $50 (as provided in the Settlement Agreement) which I may apply to any early termination charges I have incurred or might incur under my lease when all other such charges are paid in full.

  ☐ a New Lease Certificate in the maximum amount of $100 (as provided in the Settlement Agreement) which I may apply to payments (other than initial payments or deposits due at lease signing) on a new automobile lease assigned to GECAL.

☐ My lease with GECAL terminated at the scheduled termination date. Please send me a New

Lease Certificate in the maximum amount of $100 (as provided in the Settlement Agreement) which I may apply to payments (other than initial payments or deposits due at lease signing) on a new automobile lease assigned to GECAL.

CERTIFICATION

Under penalty of perjury, the undersigned hereby certify(ies) that all information set forth above in this Proof of Claim is true and accurate. The undersigned hereby confirms that this Proof of Claim is submitted in accordance with and subject to the provisions of the Settlement Agreement and Notice of Proposed Settlement in the above case, and acknowledges that claims of the undersigned against General Electric Capital Auto Lease, Inc. shall be dismissed with prejudice to the extent provided in such Agreement and Notice.

Signature of Lessee(s):

_____ Date: _____

_____ Date: _____